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DIVISION II

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STATE OF WASHINGTON

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NO. 49050-1-II

STATE OF WASHINGTON COURT OF APPEALS FOR DIVISION II

JOHN WORTHINGTON,

Appellant

v.

WASHINGTON STATE LIQUOR AND CANNABIS BOARD, ET AL,

Respondents

APPELLANT'S OPENING BRIEF

ORAL ARGUMENT REQUESTED

John Worthington
4500 SE 2ND PL.
Renton WA.98059

ORIGINAL

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Appendix

Appendix A

Order on hearing CP 618-624

Appendix B

Pages from Certified Agency record. AR 2-3, AR 49-50, AR 56-57, AR 63, AR 65, AR 110-119.

Appendix C

Declarations of Karen McCall and Bob Schroeter, email stating that Original Rulemaking file no longer exists, interrogatories to board showing Board never authorized final or working copy CP 409-443, CP 452-455, CP 494-495, CP 496-498

Appendix D

Pages from Petition for Review CP 578- 579, Opening brief CP 16, and Reply brief CP 529, CP 538

Appendix E

Public record showing the “separate process to get info,” “because some would not want a public discussion,” and the Board deciding it disagreed with the AG. CP 146-147

Appendix F

Ruling of Thurston County Superior Court Judge Christine Schaller in case # 13-2-02227-3, that there is no description of a Working or final rulemaking file in the APA. CP 475-493

Appendix G

Public records showing the intent of Results Washington and the State Policy Enhancement (SPE), to use cross agency collaborations targeting I-502 rulemaking, and also showing the WSLCB is part of both collaborations. **CP 500-522**

Appendix H

Public records showing the Governor's office ordering internal discussions only and documenting the DSHS is coordinating rulemaking with the Governor's office. **CP 150**

Appendix I

Public records that show the "Partnership" in action during the rulemaking. **CP 78, CP 126-143,**

I. INTRODUCTION

Worthington appeals the trial court's ruling on a combined complaint, arising from Worthington's legal challenge to the rules and rulemaking process for Initiative 502 (I-502).

One part of the complaint was a petition for judicial review under RCW 34.05 (APA) against the Washington State Liquor Board.¹ The petition sought to invalidate I-502 rules and then adopt new rules in compliance with RCW 34.05.375. The other part is a complaint pursuant to RCW 7.24 (UDJA), and seeks declaratory and injunctive relief against a "partnership," an executive order, an alleged federal grant conflict, and alleged interferences with rulemaking by the Attorney General and Governor's Offices.

At the trial court, Worthington alleged the violations under the APA, were that the Board held 17 or more secret meetings with its "partnership," and failed to put their rulemaking comments in the rulemaking file. Worthington later added the allegation that the board illegally took documents out of the rulemaking file to create a "final" copy of the rulemaking file. Worthington also alleged the Board should have listed its "partners" in the pre-notice inquiry. Worthington alleged all three

¹ The Agency name is now Washington State Liquor and Cannabis Board. Worthington filed the complaint before the name was officially changed.

acts were cause to invalidate the rules for I-502 pursuant to the RCW 34.05.375. The actions at dispute under the UDJA were a secret and separate rulemaking process for a “partnership,” the cross agency collaborations on I-502 rules with Results Washington and the State Policy Enhancement (SPE), the Governor’s office interference and Attorney General’s influence hidden by the attorney client privilege.

The trial court correctly ruled that the Board’s decision to deny Worthington’s petition, was arbitrary and capricious because specific rules to be repealed were cited and the board failed to properly respond. However, the trial court erred when it ignored a rules review challenge and sent the rules review issue back to the agency under wrong standard of review. The trial court also erred when it ruled that the constitutional claims did not meet the high burden of proof. Worthington objected to the rulings and preserved the issues for appeal.

On appeal, Worthington respectfully requests the Court of Appeals to conduct the rules review under RCW 34.05.570 (2), or remand the case back to the trial court with orders to do the same. Worthington also argues a direct remand to the Board pursuant to RCW 34.05.562, is futile because the Board has admitted past versions of the rulemaking file no longer exist. The evidence on the record supports Worthington’s allegations.

If the Court of appeals chooses to conduct the rules review pursuant to RCW 34.05.570 (2), Worthington respectfully requests declaratory and injunctive ruling to invalidate I-502 rules and a remand back to the agency to conduct legal rulemaking under the APA. Worthington also seeks relief under the UDJA and requests a declaratory ruling and injunctive relief to undo the “partnerships” shadow rulemaking process and protect the future process by enjoining the Governor, Attorney General, Executive order Results Washington and the State Policy Enhancement (SPE), and the “partnership” from setting up another shadow rulemaking process.

The law requires that rules for I-502 be invalidated by this court and injunctive relief should be provided to protect the rulemaking process from outside interferences by influential Meta associations.

The board claimed Worthington only made claims under the appearance of fairness doctrine “and made no other claims”. The Board should be limited to those arguments on appeal and should not be allowed to use their cross appeal to get a second kick at the administrative cat on other issues besides the appearance of fairness doctrine.

II. ASSIGNMENT OF ERROR

1. The trial Court erred in its findings of facts in subsection I and conclusions of law in subsection II, by failing to include RCW 34.05.310 and then make a separate and distinct ruling on each material issue on which the court's decision is based in violation of RCW 34.05.570 (1) (c).

2. The trial court erred in its findings of facts subsection III and conclusions of law in subsection II, when it failed to acknowledge and follow the statutory language of RCW 34.05.570 (2) (b), and RCW 34.05.570 (2) (c), RCW 34.05. 310, RCW 34.05. 312, RCW 34.05. 315, RCW 34.05.325., and RCW 34.05.370 and declare that the rules for I-502 are invalid because the board violated RCW 34.05.375.
3. The trial court erred in its findings of facts subsection III and conclusions of law in subsection II, when it converted Worthington rules review to “other agency action.” (RCW 34.05.570 (4).
4. The trial court erred in its findings of facts subsection III and conclusions of law in subsection II, when it failed to uphold the statutory requirement in RCW 34.05.566, for the agency to provide the rulemaking file once the rulemaking file was identified as an agency action at dispute and send the matter back to the agency pursuant 34.05.562 (2) (c).
5. The trial court erred in its finding of facts and conclusions of law when it gave judicial consideration to general opposition to Worthington’s allegations of violations under the APA and UDJA.
6. The trial court erred in its finding of facts in subsection III, and its conclusions of law in subsection IV, and V, when it failed to rule that the I-502 rulemaking process was unconstitutional under the APA and RCW 7.24.
7. The trial court erred in its finding of facts in subsection III, and its conclusions of law in subsection IV, and V, when it did not provide injunctive relief to stop the “Partnership”, the Attorney General’s office, Governor’s Office, State Policy Enhancement (SPE) and Results Washington, from interfering with the I-502 rulemaking process.
8. The trial court erred in its finding of facts in subsection III, and its conclusions of law in subsection IV, and V, when it failed to liberally construe the Uniform Declaratory Judgments Act in accord with its remedial intent to resolve an existing controversy of substantial public importance.
9. The trial court erred in its finding of facts in subsection III, and its conclusions of law in subsection IV, and V, by failing to protect Worthington’s Constitutional due process rights and interests, by invalidating a rulemaking process that violated Worthington’s due process rights and was unconstitutional. The trial court should have protected Worthington’s due process rights and interests by replacing the unconstitutional and statutorily invalid rulemaking

- process with a rulemaking process that was protected from further unconstitutional outside interferences and complied with the APA.
10. The trial court did not err in subsection II of its findings of facts and subsections III of the conclusions of law when it ruled the Boards decision to deny Worthington's petition was arbitrary and capricious.

A. Issues Pertaining to Assignment of Error.

1. Whether the trial Court erred in its findings of facts in subsection I and conclusions of law in subsection II, by failing to include RCW 34.05.310 and make a separate and distinct ruling on each material issue on which the court's decision is based in violation of RCW 34.05.570 (1) (c). Worthington respectfully argues the answer to that is yes, because the trial court failed to see RCW 34.05.310 on the agency record (**AR 63**) and listed Worthington's allegations of violations of RCW 34.05. 315, RCW 34.05.325, RCW 34.05.370 and RCW 34.05.375 in the findings of facts but failed to make a separate and distinct ruling on those issues. **CP 618-624**
2. Whether the trial court erred in its findings of fact in subsection II and conclusions of law in Subsections II, when it failed to see Worthington cited the rules review statute, RCW 34.05.570 (2) (b) and RCW 34.05.570 (2) (c) in his petition for judicial review. Worthington respectfully argues the answer to that is yes because the rules review statute, RCW 34.05.570 (2) (b) RCW 34.05.570 (2) (c) is shown in the Petition for review in subsection 9.1 through 9.8. RCW 34.05.570 (2) (c) is in Worthington's opening and reply brief and the motion to clarify. **CP 578-579, CP 16, CP 554**
3. Whether the trial court erred in its finding of facts in Subsection III and conclusions of law in subsections II, ruling Worthington requested a judicial review only under other agency action, 34.05.570 (4), Worthington respectfully argues the answer to that is yes, because the petition for judicial review cited the rules review statute, RCW 34.05.570 (2) (b) RCW 34.05.570 (2) (c) in subsection 9.1 through 9.8, not other agency action under 34.05.570 (4). Worthington also cited RCW 34.05.570 (2) (c) in his opening and reply brief, and because that is the only statute that could decide whether the board complied with RCW 34.05.375. **CP 578-579**

4. Whether the trial court erred in its findings of fact in subsection III, and its conclusions of law in subsection II, when it failed to require the Board to provide the rulemaking file for the judicial review pursuant to RCW 34.05.566 or send the matter back to the agency. Worthington respectfully argues the answer to that is yes because Worthington complied with RCW 34.05.546 and identified the rulemaking file as an agency action at issue. The trial court erred when it failed to give effect to the plain meaning of both RCW 34.05.546 , RCW 34.05.566. **AR 61, CP 559-600**
5. Whether the trial court erred in its findings of fact in subsection III, and its conclusions of law in subsection II, when it failed to require the Board to provide the rulemaking file for the judicial review pursuant to 34.05.562 (2) (a) and (c), prior to any ruling. Worthington argues the answer to that is yes because the statute states that if the agency failed to prepare or preserve an adequate record, and excluded or omitted evidence from the record the matter must be sent back to the agency. The agency admitted it no longer had the original rulemaking file that existed when the adopted the rules in October of 2013. The issue was brought up in the briefing. **CP 17-19, CP 30-31**
6. Whether the trial court erred in its findings of fact in subsection III and its conclusions of law in subsection II, when it did not rule the rules for I-502 were invalidated because the Board violated, RCW 34.05.370 and RCW 34.05.375 when the Board admitted it no longer had a legal rulemaking file after creating a “final” copy, and after permanently altering the rulemaking file to make an agency record for a previous APA case. Worthington respectfully argues the answer to that is yes because the record clearly showed the Board admitted removing documents from the rulemaking file after the Board developed rules for I-502. Once to update the file by making a “final” copy and again to make a temporary agency record in a previous APA case. The Board no longer has the rulemaking file it had when the agency action at dispute was taken. **CP 409-443, CP 452-455, CP 494-495, CP 496-498**
7. Whether the trial court erred in its findings of fact in subsection III and its conclusions of law in subsection II, when it failed to give effect to the plain meaning of RCW 34.05.370 (h). Worthington

respectfully argues the answer to that is yes because Karen McCall admitted she removed documents from the rulemaking file to create an ultra vires “final” copy of the rulemaking file, without the Boards consent. **CP 409-443, CP 452-455, CP 494-495, CP 496-498**

8. Whether the trial court erred in its findings of fact in subsection III and its conclusions of law in subsection II, when it failed to rule the rules for I-502 were invalid because the Board failed to abide by RCW 34.05.312 and RCW 34.05.375. Worthington respectfully argues the answer to that is yes because Karen McCall admitted she deferred the rulemaking file decisions to the Board and that the Board did not authorize a “final” copy of a rulemaking file to be constructed. The trial court erred in its findings of fact in subsection III and its conclusions of law in subsection II, when it failed to rule Karen McCall invalidated I-502 rules when she created an ultra vires “final” copy of the I-502 rulemaking file without the Boards consent. **CP 405-455**
9. Whether the trial court erred in its findings of fact in subsection III and its conclusions of law in subsection II, when it failed to rule the rules for I-502 were invalid because the Board failed to abide by RCW 34.05.310 and RCW 34.05.375. Worthington respectfully argues the answer to that is yes because the board joined a “partnership” and failed to list its “partners” in rulemaking in the pre-notice inquiry. **CP 78, CP 126-143, CP 330**
10. Whether the trial court erred in its findings of fact in subsection III and its conclusions of law in subsection IV and V, when it did not rule the Governor’s office interfered with I-502 rulemaking when they requested the Board have “internal” discussions for section 28 of I-502. Worthington respectfully argues the answer to that is yes because the agency admitted it was told by the Governor’s office to keep its discussions on section 28 of I-502 internal. **CP 150.**
11. Whether the trial court erred in its finding of facts in subsection III and its conclusions of law in subsection IV and V, when it did not provide declaratory ruling Executive order Results Washington and the ‘State Policy Enhancement’ (SPE) created a shadow rulemaking process that targeted I-502 rulemaking to influence marijuana policy outside of the APA. Worthington respectfully

argues the answer to that is yes because the action plans created by the WSLCB and their overlapping members of Results Washington and SPE show they targeted I-502 rulemaking. **CP 517-522.**

12. Whether the trial court erred in its finding of facts in subsection III and its conclusions of law in subsections IV, and V, when it failed to provide injunctive relief to stop Results Washington and the SPE from interfering with the I-502 rulemaking process again. Worthington respectfully argues the answer to that is yes because the Board has been ordered by executive order to work outside the APA to develop marijuana rules with Results Washington, and is developing rules for marijuana in Washington State as loaned federal employees and borrowed servants, contracted to keep marijuana out of Washington. **CP 500-522**
13. Whether the trial court erred in its finding of facts in subsection III and its conclusions of law in subsections IV, and V, by not liberally construing the Uniform Declaratory Judgments Act in accord with its remedial intent to resolve an existing controversy of substantial public importance. Worthington respectfully argues the answer to that is yes because it was appropriate to address the actions of non-agency partners under the UDJA. Worthington's injury was undisputed and the trial court failed to clarify uncertainty with the rulemaking process in Washington State, and the ability of non-agency actors to influence rulemaking from the shadows. Worthington had standing because he requested the AG to act and they did not.
14. Whether the trial court erred in its findings of facts in subsection III and its conclusions of law in subsections IV and V, by failing to protect Worthington's due process and interests. Worthington respectfully argues the answer to that is yes because Worthington's claims of injury were uncontested after the Board claimed no other claims were made other than appearance of fairness claims. **CP 610**
15. Whether the trial court erred in subsection II of its findings of facts and subsections III conclusions of law when it ruled the Boards decision to deny Worthington's petition was arbitrary and capricious. Worthington respectfully argues the answer to that is

no because the agency record did not show a thorough process of reason was applied to all the statutes that were cited.

III. STATEMENT OF THE CASE

A. Worthington filed a petition to repeal current I-502 rules and adopt new rules with the Board.

On April 20, 2015, John Worthington submitted a petition to the Board, asking it to repeal all marijuana rules and marijuana land use decisions adopted by the Board in October 2013 in Chapter 314-55 of the Washington Administrative Code (WAC) (October 2013 rules) in order to implement Initiative 502. **AR 5-46**

In his initial petition, Worthington argued that the rules should be repealed because the Board violated the appearance of fairness doctrine by having secret rulemaking meetings.

On May 19, 2015 and May 23, 2015, Worthington emailed an addendums to his petition which additionally argued that the Board's October 2013 rulemaking violated RCWs 34.05.310, 34.05.370, 34.05.325, and 34.05.375. Worthington asserted further that the Board removed communications from the rulemaking files, which is a felony in Washington, in order to create a "final" copy of the I-502 rulemaking file. Worthington reiterated his request that the Board repeal all of its rules and properly conduct rulemaking in substantial compliance with RCW 34.05.375. **AR 58- 63, AR 118-119**

B. The Board denied Worthington's petition.

On June 11, 2015, WSLCB denied the petition claiming Worthington did not cite any rules that should be repealed in his petition. The Board also alleged it properly followed the APA making I-502 rules. The Board believed that the proper rulemaking processes were followed and the October 2013 rules properly implemented I-502. **AR 2-3, AR 56-57**

C. Worthington Appeals the agency decision.

On August 24, 2015, Worthington filed his first amended petition for review under RCW 34.05.570, and his first amended complaint for violations of article 1, section 3, and article I, section 12 of the Washington State Constitution, both seeking review of the Board's denial of his petition and a review of the rules for I-502. In his petition for review, Worthington asserted that the Board improperly denied his petition for rulemaking on the grounds that he did not cite any rules that should be repealed in his petition. **CP 565**

Worthington further alleged that the Board incorrectly determined it followed the Administrative Procedure Act (APA), in making the October 2013 rules. Worthington specified that: (1) the Board failed to comply with RCW 34.05.310; (2) the rules coordinator failed to maintain all the records of the agency actions; (3) the Board failed to comply with RCW 34.05.325; and (4) the Board failed to comply with RCW 34.05. 370.

CP 559-600

Worthington also argued that the Board erroneously interpreted and applied the law, that its decision was arbitrary and capricious and that its decision was not supported by substantial evidence. **CP 574-575, CP 581**

Worthington filed his opening brief under his petition for review, reiterating the claims in his petition for review and adding more statutes relative to the criteria outlined in RCW 34.05.375. **CP 7-37**

In its response brief, the Board asserted that its decision to deny Worthington's petition for rulemaking was not arbitrary and capricious. The Board additionally asserted that Worthington appealed only the denial of his petition for rulemaking, so judicial review was limited to review of that agency action and did not extend to the October 2013 rules.

CP 601-615

The Board argued that the appropriate relief was to affirm its denial, or remand to the Board. On April 20, 2016, Worthington filed a reply brief, arguing that his petition for rulemaking, his petition for review, and his opening brief all challenged the validity of the October 2013 rules. Worthington also faulted the Board for failing to provide the rulemaking file for the rules adopted in October of 2013. **CP 552-558**

D. The Trial court remanded back to the Board.

The Thurston County Superior court held a hearing on Worthington's petition for review and on May 20, 2016, entered an order captioned:

Findings of Fact, Conclusions of Law, and Order. CP 618- 624

The court entered the following findings of fact

I.

Worthington filed a petition for adoption, amendment repeal of rules under RCW 34.05.330 on April 20, 2015, requesting the Board to "repeal all rules involved with the implementation of 1-502." In support of this claim, Worthington argued that the Board violated the Appearance of Fairness Doctrine, that the Board violated provisions of the APA (RCW 34.05. 315, RCW 34.05.370, and RCW 34.05.325) by holding 17 secret meetings and that by doing so violated RCW 34.05.375. Worthington also asserted that he was told the entire rule making file did not exist and was updated after rulemaking was completed but that there is no such thing as a "final rulemaking file."

II.

The Board denied Worthington's petition on June 10, 2015. In the Board's denial, the Board stated "The Petition does not object to any particular rule, but only to the Board's rule adoption process and alleged effect of the rules. Staff believes the proper rulemaking processes were followed and the rules properly implement the initiative."

III.

Worthington appealed this agency action to the Superior Court requesting relief under the Uniform Declaratory Judgment Act. Worthington also made new arguments not made before the Board, including claims that the rulemaking process was unconstitutional. Worthington also sought relief against non- agency parties including the Attorney General Bob Ferguson and Governor Jay Inslee.

Based on its findings of fact, the court entered the following pertinent Conclusions of Law:

II.

The Board's denial of Worthington's petition for rulemaking was other agency action reviewable under 34.05 RCW.

III.

The Board's statement that Worthington did not object to any particular rule is erroneous and therefore arbitrary and capricious.

IV.

The Uniform Declaratory Judgment Act cannot afford relief of agency action and no relief will be granted by this court under that statute. This is a final judgment as to UDJA [Uniform Declaratory Judgment Act] claims for purposes of CR 54 (b).

V.

Worthington did not meet the high burden of establishing the Board's rulemaking process was unconstitutional and, therefore, the Court will find no Constitutional violations.

VI.

The Appearance of Fairness Doctrine is inapplicable in the rulemaking context so there can be no violation of this Doctrine by the Board during rulemaking.

VII.

Relief is not appropriate under chapter 7. 24 RCW, because that chapter is not applicable to state agency action under 34.05 RCW.

VIII.

Relief is not appropriate under chapter 34.05 RCW against non-agency parties.

IX.

Under RCW 34. 05.574 "in a review under RCW 34. 05.570, the court may (a) affirm the agency action or (b) order an agency to take action required by law, order an agency to exercise discretion required by law, set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter a declaratory judgment order. The court shall set out in its findings and conclusions, as appropriate, each violation or error by the agency under the standards for review set out in this chapter on which the court bases its decision and order. In reviewing matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency. The court shall remand to the agency for modification of agency action, unless remand is impracticable or would cause unnecessary delay.

Based on its findings and conclusions, the court entered
the following order:

This matter is remanded to the Washington State Liquor and Cannabis Board to issue a new decision that will address each of Worthington's specific objections and concerns brought in his Petition to the Board in a thoughtful manner. The Board is not required to address any arguments not made originally before the Board as part of Worthington's original Petition. The Board does not need to address the Appearance of Fairness doctrine because that doctrine is inapplicable in the rulemaking context. The Court will not order relief against any non-agency party.

Worthington objected to the trial court's decision not to determine if the rules for I-502 were invalidated, because an original rulemaking file no longer existed. Worthington filed a motion to clarify the trial court ruling and for CR 54 certification. The trial court was shown the rules review statute again in the briefing. The trial court granted CR 54 certification of

constitutional issues brought against non-agency defendants, and refused to acknowledge that Worthington made a rules review challenge to Board or the trial court and refused to adjust its findings of facts and conclusions of law. Worthington again objected on the record.

E. Worthington and the Board filed a Discretionary Review of the trial court ruling.

Both Worthington and the Board sought discretionary review of the superior court's May 20, 2016 order. Worthington argued that the court erred in remanding his petition for review to the Board rather than ruling on his challenges to the Board's denial of his petition for rulemaking or his challenges to the October 2013 rules. The Board argued that the court erred in remanding to the Board rather than affirming the Board's denial of Worthington's petition for rulemaking. Both Worthington and the Board argue in the alternative that the May 20, 2016 order was a decision terminating action appealable as a matter of right under RAP 2.3 (b) (3). This Court of Appeals agreed that the May 20, 2016 order is appealable as a matter of right under RAP 2.3 (b) (3), and refused to exclude the rules review from the appeal. Worthington files this timely opening brief.

IV. ARGUMENT

A. Standard of Review

This Court has jurisdiction over the Parties and the claims decided

herein under RCW 34.05.514 and RCW 34.05.570 (2). In the alternative, this Court would have jurisdiction to decide this matter under RCW 34.05.514 and RCW 34.05.570 (4) or the Declaratory Judgment Act, RCW 7.24. This court also has jurisdiction over this matter pursuant to the Washington administrative Procedures Act ("APA"), RCW 34.05.526 and Washington Rule of Appellate Procedure ("RAP") 2.2 (a) (1). This court reviews legal issues and the trial court's conclusions of law *de novo*, based on the record before the Board. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003); *City of Union Gap v. Dep't of Ecology*, 148 Wn. App. 519, 525, 195 P.3d 580 (2008). The standard of review on appeal remains the same as that for the Superior Court, which acted as an appellate court in reviewing the administrative decision. *Chemithon Corp. v. Puget Sound ..Air pollution Control Agency*, 19 Wn. App. 689, 577 P.2d 606 (1978). This Court is limited to determining if there is substantial evidence to support the trial court's Findings of Fact and Conclusions of Law, *Ferencak v. Dep't of Labor & Indus.*, 142 Wn.App 713, 175 P.3d 1109 (2008). Issues of law', or mixed questions of law and fact are reviewed *de novo*. *Devine v. Employment Sec. Dept.*, 26 Wn. App. 778, 614 P.2d 231 (1980).

An appellate court reviews an action under the UDJA in the same manner as other civil actions under the ordinary rules of appellate

procedure. RCW 7.24.070. The appellate court reviews the trial court's findings of fact under the substantial evidence standard. Conclusions of law involving the interpretation of statutes and municipal ordinances are reviewed *de novo*. *Schneider v. Snyder's Foods, Inc.*, 116 Wn.App. 706, 713, 66 P.3d 640 (2003); *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999); *Nollette v. Christianson*, 115 Wn.2d 594, 599-600, 800 P.2d 359 (1990). Under the UDJA, factual issues are tried and determined in the same manner as issues of fact are tried and determined in other civil actions. RCW 7.24.090.

B. Worthington had APA standing to seek review.

The Board failed to see any other claims besides Worthington's claims under the appearance of fairness doctrine, and failed to make challenges to Worthington's standing to bring the other claims they could not see. Thus, the Board has waived standing challenges to the claims they could not see and did not address and they are now verities on appeal. The only general standing arguments under the APA they have made apply to the only claims they saw, the appearance of fairness doctrine claims. The Board made no standing arguments challenging standing criteria under RCW 34.05.570 2 (b) and thus waived those standing arguments at the trial court. "Outside the Declaratory Judgments Act, standing is an issue that must be raised in the

trial court.” Amalgamated Transit Union Local 587 v. State 142 Wn.2d 183, 203-04 n.4, 11 P.3d 762, 27 P.3d 608 (2000); see also Baker v. Teachers Ins. & Annuities Ass Coll. Ret. Equity Funds, 91 Wn.2d 482, 484, 588 P.2d 1164 (1979) (where issue of standing was not submitted to trial court, it could not be considered on appeal)

The trial court did not err in failing to make a ruling on standing. The only standing arguments dispute required to be settled at the trial court were in regards to the appearance of fairness doctrine. Worthington agreed the appearance of fairness doctrine did not apply to the APA so the issue of standing on claims Worthington argued did not apply was moot.

Worthington would have been glad to redirect on standing issues but the Board’s standing challenges applied to the appearance of fairness doctrine issue or were unaddressed altogether and in the wrong standing criteria under RCW 34.05.530 and not RCW 34.05.570 2 (b).

Worthington has shown that he is a person "aggrieved or adversely affected" by an agency action. St. Joseph Hosp. & Health Care Ctr. v. Department of Health, 125 Wn.2d 733, 739, 887 P.2d 891 (1995)

As a notorious medical marijuana user, clearly Worthington was in the zone of interest and argues his legal rights or privileges would be affected by the rule developed in the shadows by a group of “partners” some with interests the extreme opposite of Worthington. The trial court never made

that inquiry or ask for clarification and more briefing to decide standing issues under RCW 34.05.570 (2) (b), after the statute was cited by Worthington. Worthington was deprived of an opportunity to settle standing issues decided by the court in the briefing especially in a motion to reconsider, because WSLCB saw no other claims and placed all their eggs in the appearance of fairness doctrine basket.

Worthington obviously had standing to challenge the agency action under 34.05.530. (1) The agency action has prejudiced or is likely to prejudice that person;(2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and (3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action. These statutory conditions are drawn from federal case law. See *Association of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153, 25 L. Ed. 2d 184, 90 S. Ct. 827 (1970). The first and third conditions are often referred to as the injury-in-fact requirement. See 13 Charles A. Wright et al., *Federal Practice* § 3531.4 (1984).

Worthington meets the first criteria because the agency made partners with law enforcement organizations receiving federal funds to eradicate marijuana and were able to get a separate rulemaking process to get their

information infiltrated into the rulemaking process without rebuttal. As a notorious medical marijuana user Worthington's interests are clearly within the zone of interests the agency was required to consider and was among the injured. It requires that the party seeking review be himself among the injured." Lujan, 504 U.S. at 563, 112 S. Ct. at 2137 (quoting Sierra Club v. Morton, 405 U.S. 727, 734-35, 92 S. Ct. 1361, 1366.31 L. Ed. 2d 636 (1978)). Worthington meets the third criteria because a judgment would eliminate the tainted, separate, and inept rulemaking process and require a new and open process performed by some advocates capable of being the kind of experts a court could give deference to, rather than with puppet adversaries that had little or no marijuana experience, who overlooked the basic and rudimentary regulations to ensure a safe and reliable source of marijuana. The zone of interest prong focuses "on whether the Legislature intended the agency to protect the party's interests when taking the action at issue." Seattle Bldg. and Constr. Trades Council, 129 Wn.2d at 797 (quoting St. Joseph Hosp., 125 Wn.2d at 739-40 (citing William R. Anderson, The 1988 Washington Administrative Procedure Act - An Introduction, 64 WASH. L. REV. 781, 825 (1989)) Worthington's medical marijuana interests were clearly not protected.

Worthington also meets the standing requirements of the more

specific RCW 34.05.570 (2) (b) which states in relevant part: when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. When marijuana prohibition stakeholders get a special and secret seat in the rulemaking process, and Worthington is unable to see what their comments were and what the Board was influenced by, and without question meets the criteria of appearing to threaten and impair Worthington's legal rights to due process by granting a privilege to those with interests and goals the exact opposite.

Considering all comments received during the 17 secret Meetings, the record shows the Board was more concerned and preoccupied with getting rid of medical marijuana, limiting stores and capping production, considering all comments received during the 17 secret meetings. (AR 70-91 AR 130-204). That is why Worthington was subject to the acquisition of marijuana tainted with pesticides and fertilizers.² The "Partnership" had a documented obsession with getting rid of medical marijuana, limiting store locations and hours, and federal compliance with a dubious federal prosecutorial guideline³ that they

² <http://traceanalytics.com/banned-pesticide-residue-on-recreational-marijuana/>

³ Cole Memo: <https://www.justice.gov/opa/pr/justice-department-announces-update-marijuana-enforcement-policy>

requested and was not a federal law or even executive order listed in the federal register. That is why Worthington was subjected to high prices to keep marijuana so expensive children could not purchase it, and because of a lack of supply and demand with the Cole memo production cap.

Worthington's financial and physical injuries were concrete and personal. See *Trepannier v. City of Everett*, 64 Wn. App. 380, 383, 824 P.2d 524 (1992).

The rulemaking "partnership's goals and interests were not with the users of marijuana, they were in a "partnership" and under the terms of federal grants which opposed marijuana legalization and as a result they authorized the sale and distribution of tainted product that had not been properly tested for the basic substances that any legitimate rulemaking process would have considered to be best practices and standard operating procedures. It was Worthington's duty to challenge the inept rules made by the "Partnership," and he had standing to do so. The threat of Worthington using expensive and tainted marijuana was not hypothetical it is now stated fact. To this day tainted marijuana is still an issue.

Worthington respectfully argues he has met the standing requirements to invoke a review under RCW 34.05.570 (2), RCW 34.05.570 (4) if the Court of appeals finds the issues were not waived at the trial court.

C. The trial Court erred in its findings of facts in subsection I and conclusions of law in subsection II by failing list RCW 34.05.310 and failing to make a separate and distinct ruling on each material issue on which the court's decision is based in violation of RCW 34.05.570 (1) (c).

Worthington clearly identified two separate agency actions at dispute.

One agency action was the failure of the board to act on Worthington's petition, and the other agency action was partially described in the trial court's finding of facts as shown below:

"that the Board violated provisions of the APA⁴ (RCW 34.05. 315, RCW 34.05.370, and RCW 34.05.325) by holding 17 secret meetings and that by doing so violated RCW 34.05.375.

Worthington also asserted that he was told the entire rule making file did not exist and was updated after rulemaking was completed but that there is no such thing as a "final rulemaking file."

CP 618-624

Although the trial court partially listed Worthington's second agency action at dispute in the findings of facts, the trial court erred when failed to answer that legal finding in its conclusions of law. The trial court erred by failing to rule whether the board violated RCW 34.05.315, RCW 34.05.370, and RCW 34.05.325 and determine if the board violated RCW 34.05.375. It was obvious the trial court saw the alleged violations of RCW 34.05. 315, RCW 34.05.370, RCW 34.05.325 and RCW 34.05.375, but for some reason failed to provide a conclusion of law for

⁴ The trial court also erred when it failed to identify RCW 34.05.310 in this finding although the allegations of violations of this statute are on the agency record **AR 63**.

those findings of fact. The trial court erred by failing to follow the statutory requirements of **RCW 34.05.570 (1) (c)** which reads in relevant part: (c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based. The trial court erred when it failed to comply with **RCW 34.05.570 (1) (c)**, and the Court of Appeals should make that ruling for reasons of judicial economy.

D. The trial court erred in subsection I in the findings of facts and subsection II of the conclusions of law by failing to conduct a rules review pursuant to RCW 34.05.570 (2) (b), and RCW 34.05.570 (2) (c) and make the proper statutory interpretations after Worthington identified them.

The APA's standards of judicial review required the trial court to make two inquiries: first, whether Worthington met his burden of demonstrating that the Board's decision to forgo rulemaking was arbitrary or capricious, and, second, whether Worthington showed the Board violated RCW 34.05.310, RCW 34.05.312, RCW 34.05.315, RCW 34.05.370, RCW 34.05.325 and RCW 34.05.375, and was adopted without compliance with rulemaking procedures. 570(4) does not apply to agency actions reviewable under 570 (2). (See *N.W. Ecosystem Alliance v. Wash. Dep't of Ecology*, 104 Wn.App. 901, 905, 17 P.3d 697 (2001))

The trial court erred by failing to complete the second inquiry even though it acknowledged the factors in its finding of facts. The trial court

did not err on the first inquiry. Or in the alternative the trial court improperly made both inquiries under RCW 34.05.570 (4) sua sponte. Either way, the rules review was lost or was headed back to the agency under the wrong statute and the trial court ruling should be overturned.

The APA provides that "the validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner." RCW 34.05.570 (2) (b) (emphasis added). (See Generally *Rios v. Labor & Industries*, 145 Wn.2d 483 (Feb. 2002) RCW 34.05.534(1) states that "[a] petitioner for judicial review of a rule need not have participated in the rule-making proceeding upon which that rule is based. Worthington did bring the rules validity challenge up in his petition to repeal and adopt new rules.

In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary or capricious. In this case, Worthington asserts that WSLCB decisions were made without compliance with statutory rulemaking

procedures. Rules are invalid unless adopted in compliance with the APA. *Simpson Tacoma Kraft Co. v. Department of Ecology*, 119 Wn.2d 640, 649, 835 P.2d 1030 (1992) “Rule-making procedures under the APA involve providing the public with notice of the proposed rule and an opportunity to comment on the proposal.” See RCW 34.05.320, .325. “The purpose of rule-making procedures is to ensure that members of the public can participate meaningfully in the development of agency policies which affect them Simpson,” 119 Wn.2d at 649; Andersen, *supra*, at 791; ARTHUR E. BONFIELD, STATE ADMINISTRATIVE RULE MAKING § 3.3.2(d) (1986); see also RCW 34.05.001.

Here, Worthington spelled out the rules review statute RCW 34.05.570 (2) (b) and the fact he complied with the statute by naming the agency as a party to the action. **CP 578- 579** Worthington also cited RCW 34.05.570 (2) (c) in the same causes of action, the opening brief and his reply brief. For some reason the trial court ignored the rules review statutes and decided to conduct the entire judicial review under RCW 34.05.570 (4) *sua sponte*.

After reading Worthington’s reply brief it should have been crystal clear to the court that it needed to make two inquiries. One under RCW 34.05.570 (2) and one under other agency action RCW 34.05.570 (4).

Worthington alleged the Board violated RCW 34.05.375 which reads

in relevant part:

No rule proposed after July 1, 1989, is valid unless it is adopted in substantial compliance with RCW 34.05.310 through 34.05.395. Inadvertent failure to mail notice of a proposed rule adoption to any person as required by RCW 34.05.320(3) does not invalidate a rule. No action based upon this section may be maintained to contest the validity of any rule unless it is commenced within two years after the effective date of the rule.

RCW 34.05.570 (2) (c) contains the only language that could allow a review of an agencies compliance with the statutory rulemaking procedures outlined in RCW 34.05.375. RCW 34.05.570 (2) (c) reads in relevant part:

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

Rios v. Labor & Industries, 145 Wn.2d 483 (Feb. 2002) established that rules reviews do not have to be brought before an agency prior to seeking relief from a court. That case also establishes agency failures to act are reviewed under RCW 34.05.570 (4) (c), and rules reviews are reviewed under RCW 34.05.570 (2) “ Whereas the pesticide handlers' challenge of the 1993 rule falls under RCW 34.05.570(2), their challenge to the Department's 1997 denial of their rulemaking request comes under

RCW 34.05.570 (4)”

RCW 34.05.570 (4) (c) does not contain a provision that allows a court to determine whether an agency complied with RCW 34.05.375, which is substantial compliance with procedures. RCW 34.05.570 (4) (a) and (c) reads in relevant part:

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

- (i) Unconstitutional;
- (ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;
- (iii) Arbitrary or capricious; or
- (iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

As shown above compliance with RCW 34.05.375 was not reviewable under RCW 34.05.570 (4) (c) and was only reviewable under 34.05.570 (2) (c). The trial court erred by inquiring whether the board complied with RCW 34.05.375 in RCW 34.05.570 (4) (c). Ultimately, the trial court erred when it failed to conduct the rules review and apply the standing test in subsection “(2) provides that the validity of any rule may be determined when it appears that "the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or

impair the legal rights or privileges of the petitioner." RCW

34.05.570 (2) (b) (i)", but did not err when it ruled the agency decision to deny Worthington's petition was arbitrary and capricious under other agency action, because that is the statute that deals with a failure of the agency to act.

The Board has argued Worthington changed positions, but Worthington just clarified his position in the course of the briefing. Worthington never changed his position he sought a rules review under 34.05.570 (2). The Board misled the trial court and the COA in the motion for discretionary review of the facts. The Board's argument 34.05.570 (2) was not quoted until the reply brief was not supported by the record. The Board did admit the argument under 34.05.570 (2) (c) was raised in the briefing and it should have been addressed. The trial court erred when it failed to conduct a review of the rules under 34.05.570 (2). The Board is limited in this appeal because it alleged not to have seen Worthington's rules validity challenge and confined its opposition to the appearance of fairness doctrine, so the issue is now a verity on appeal.

Worthington alleged the rules for I-502 were invalidated pursuant to RCW 34.05.375, because the board failed to follow the statutory requirements in RCW 34.05.310, RCW 34.05.312, and RCW 34.05.370. The rules review statute, RCW 34.05.570 (2) (b), and RCW 34.05.570 (2)

(c) is shown in subsection 9.1 through 9.8. **CP 578- 579.** RCW 34.05.570

(2) (c) is also cited in the opening brief and reply brief. **CP 16 and CP 529, CP 538**

The board never denied the allegations in its response brief and claimed that Worthington only made arguments under the appearance of fairness doctrine. In other words, they claimed not to see Worthington's allegations that the rules for I-502 were invalid in the complaint. **CP 601-617** However, Worthington did make the argument that the rules for I-502 were invalid because the board did not follow the statutory requirements RCW 34.05.310, RCW 34.05.312, and RCW 34.05.370. **AR 58-119.CP 588-596**

Worthington respectfully argues the trial court erred in its finding of facts and conclusions of law by failing to apply applied the laws, (RCW 34.05.570 (2) (b) and RCW 34.05.570 (2) (c), and invalidate the rules pursuant to RCW 34.05.375. RCW 34.05.375 states in relevant part:

‘No rule proposed after July 1, 1989, is valid unless it is adopted in substantial compliance with RCW 34.05.310 through 34.05.395. Inadvertent failure to mail notice of a proposed rule adoption to any person as required by RCW 34.05.320(3) does not invalidate a rule. No action based upon this section may be maintained to contest the validity of any rule unless it is commenced within two years after the effective date of the rule.’

Here, the rules being challenged were adopted in October of 2013.

Worthington filed this action on June 15, 2015 and in doing so complied with the latter half of RCW 34.05.375. The evidence has shown and the agency has admitted that the WSLCB no longer has the rulemaking file that existed when the rules were adopted in October of 2013. **CP 210-229, CP 237 240, CP 495-498.** This is a clear violation of RCW 34.05.312 which reads in relevant part: **Rules coordinator:**

“Each agency shall designate a rules coordinator, who shall have knowledge of the subjects of rules being proposed or prepared within the agency for proposal, **maintain the records of any such action,**

Despite the express terms of the statute, WSLCB rules coordinator Karen McCall admitted she did not maintain the records of this agency action at Dispute. The record shows she acted on her own and without direction from the board. McCall decided to take documents out of the file to create an ultra vires “final” copy from what she determined was an equally ultra vires “working copy.” The board authorized neither. **CP 408- 455**

In doing so, McCall also violated RCW 34.05.370 (h), which reads in relevant part: **(h) Any other material placed in the file by the agency.**

Despite the express terms of the statute, McCall, unauthorized by the board, placed materials in the file and then removed them. By violating RCW 34.05.312 and RCW 34.05.370, McCall’s actions triggered the language of RCW 34.05.375, and invalidated the rules for I-502 adopted

by the WSLCB in October of 2013. Bob Schroeter admitted the agency no longer had the rulemaking file for the rules adopted in October of 2013 stating:

Prior draft versions of the rulemaking file, prior to adoption of the I-502 rules, no longer exist as rulemaking files are continuously updated until completed and finalized upon adoption of rules. This is the final rulemaking file for the Board's original adoption of chapter 314-55 WAC that you inspected. CP 46

As shown above the Board failed to comply with RCW 34.05.312 and RCW 34.05.370, and the rules for I-502 should be invalidated for violations of RCW 34.05.375. The trial court erred when it failed to conduct a proper review of compliance with RCW 34.05.375 under the only statute it could, RCW 34.05.570 (2) (c).

Worthington also showed the agency entered into a rulemaking partnership⁵ and then failed to adhere to the language of RCW 34.05.310 which reads in relevant part:

Prenotice inquiry—Negotiated and pilot rules.

(1)(a) To meet the intent of providing greater public access to administrative rule making and to promote consensus among interested parties, agencies must solicit comments from the public on a subject of possible rule making before filing with the code reviser a notice of proposed rule making under RCW 34.05.320. The agency must prepare a statement of inquiry that:

⁵ CP 78, CP126-143, CP 330

(iii) Identifies other federal and state agencies that regulate this subject, and describes the process whereby the agency would coordinate the contemplated rule with these agencies;

(iv) Discusses the process by which the rule might be developed, including, but not limited to, negotiated rule making, pilot rule making, or agency study;

(2) Agencies are encouraged to develop and use new procedures for reaching agreement among interested parties before publication of notice and the adoption hearing on a proposed rule. Examples of new procedures include, but are not limited to:

(a) Negotiated rule making by which representatives of an agency and of the interests that are affected by a subject of rulemaking, including, where appropriate, county and city representatives, seek to reach consensus on the terms of the proposed rule and on the process by which it is negotiated; and

(3)(a) An agency must make a determination whether negotiated rule making, pilot rule making, or another process for generating participation from interested parties prior to development of the rule is appropriate.

Here, the evidence has shown the board entered into a “partnership” with agencies and the federal government to implement the Cole memo guidelines. Despite the express terms of the subsection (1) (a) (iii) of the statute, the board failed to identify federal and state agencies that regulate this subject, and failed to describe the process whereby the agency would coordinate the contemplated rule with these agencies, and made a conscious decision to create a “separate process to get info,” “because some would not want a public discussion.”⁶

⁶ CP 146-147

The Board also failed to adhere to the express language of subsection (1)(a) (iv) when it failed to discuss the process by which the rule might be developed, in negotiated rule making, with its partner agencies and non-agency partners. Similarly, the Board failed to adhere to subsection (2) (a) when they failed to identify the process in which it would negotiate and reach a consensus with its city and county partners the AWC, WSAC and WACO. Finally, the Board failed to adhere to the express language of subsection (3) (a), when it failed make a determination whether negotiated rulemaking was appropriate. Rather than use the pre-notice inquiry to inform the public that it was going to engage in negotiated rulemaking and identify who it was going to negotiate rulemaking with, the board decided to conduct this process underground in a “separate process to get info”, because some of the entities “would not want a public discussion.”

In failing to adhere to the express terms of select sections of RCW 34.05.310, (1) (a), (1) (a) (iii), (1) (a) (iv), (2) (a), and (3) (a), the board invalidated the rules for I-502 pursuant to RCW 34.05.375. The trial court erred in its findings of facts and conclusions of law when it failed to conduct a rules review and invalidate the rules pursuant to RCW 34.05.375. “After a trial court has weighed the evidence, appellate review is limited to a determination of whether substantial evidence supports the trial court's findings of fact, and whether, in turn, those findings support

the conclusions of law and judgment.” *Organization to Preserve Agricultural Lands v. Adams County*, 128 Wn.2d 869, 882, 913 P.2d 793, 80 1 (1996) (speculation undermining findings of facts did not warrant overturning the finding); *Nichols Hills Bank v. McCool*, 104 Wn.2d 78, 82, 70 1 P.2d 1114, 1116 (1985) (affirming trial court's dismissal of action); *Ridgeview Properties v. Starbuck*, 96 Wn.2d 7 16, 7 19-20, 63 8 P.2d 123 1, 1233-4 (1 982) (affirming trial court findings which were supported by record). “If the evidence is in conflict, the reviewing court only determines if the evidence most favorable to the prevailing party supports the challenged findings.” *Urban v. Mid-Century Ins.*, 79 Wn. App. 798, 807, 905 P.2d 404,408 (1995) (upholding findings of fact). “There is a presumption in favor of the trial court's findings, and appellant has the burden of showing that a finding of fact is *not* supported by substantial evidence.” *Fisher Properties, Inc. v. Arden-Mayfaair, Inc.*, 115 Wn.2d 364, 369-70, 798 P.2d799, 803 (1990) (affirming findings of trial court). Substantial evidence is an amount of evidence that is sufficient to persuade a fair minded person of the truth of the declared premise. *Fred Hutchinson Cancer Research Center v. Holman*, 107 Wn.2d 693, 712, 732 P.2d 974, 985 (1 987) (affirming findings of fact which have support in the record). “Findings of fact should be approved unless they are shown to be “against the weight of the evidence.” *Id.* at 7 10, 732 P.2d at 984.

Here, the trial courts findings of facts of fact in subsection I, and its conclusions of law in subsection II erred by failing to rule on the rule validity challenge, and, by ruling it was Worthington's job to object and provide an agency record, and, by failing to rule whether there was such a thing as a "final" copy of a rulemaking file, and, whether the rules for I-502 were invalid because the agency no longer had the rulemaking file that existed at the time of the agency action at dispute, are not supported by the substantial evidence and is against the weight of the evidence.

A fair minded person would not be persuaded that Worthington did not make a rules review challenge pursuant to RCW 34.05.570 (2) (b) and RCW 34.05.570 (2) (c). Nor would a fair minded person declare the premise of RCW 34.05.370, would be to place documents in the rulemaking file and take them out after board made rules from the documents in the rulemaking file. Furthermore, a fair minded person would not declare it would be truthful that the board did not conduct rulemaking activity inside and outside the APA with its partners and cross agency collaborators, many of whom were representing marijuana prohibition stakeholders who no doubt had views and goals opposite to those of Worthington. In addition, a fair minded person would not determine the board would not be required to place its "partners", "collaborators" and other entities it was negotiating rulemaking with, in

the pre-notice inquiry. The only reasonable conclusion of any fair minded person would be that the WSLCB failed to adhere to the statutory requirements of RCW 34.05.310, RCW 34.05.312, RCW 34.05.370, and in validated the I-502 rules pursuant to RCW 34.05.375.

In addition, the trial court's findings of facts of fact in subsection I, and its conclusions of law in subsection II, failed to show the trial court claimed that it was Worthington's responsibility to provide an agency record. The trial court rulings are not supported by the substantial evidence and is against the weight of the evidence. A fair minded person would not be persuaded that the statute explaining the agency record for judicial review requires a party filing a judicial review to provide an agency record of the action at dispute. Finally, the trial court's finding of facts in subsection III, and its conclusions of law in subsection IV, and V, are not supported by the substantial evidence and is against the weight of the evidence.

"Appellants bear the burden of proving that an agency order is invalid." RCW 34.05.570(1) (a). When reviewing an administrative decision, the Appellate Court sits in the same position as the superior court, applying the standards found in the Administrative Procedures Act (set forth in RCW 34.05.570 (3) directly to the record before the agency. "With respect to issues of law, the court applies a de novo standard, and

may substitute its judgment for that of the agency.” Dep’t of Ecology v. Lundgren, 94 Wn. App. 236, 971 P.2d 948, review denied, 138 Wn.2d 1005 (1999). “The court reviews routine findings of fact under the “clearly erroneous” standard of review in light of the entire record.” Cascade Nursing Servs. v. Employment Sec. Dep’t, 71 Wn. App. 23, 29, 856 P.2d 421 (1993). “Under the “error of law” standard, this Court may substitute its judgment for that of the agency.” R.D. Merrill v. Pollution Control Hrgs. Bd., 137 Wn.2d 118, 142-43, 969 P.2d 458 (1999).

Worthington respectfully requests the Court of Appeals, in light of the entire record, substitute its judgment for that of the Board, and rule the Board failed to follow the statutory requirements outlined in RCW 34.05.375.

When the inquiry demands construction of a statute, review is de novo. Port of Seattle v. Pollution Control Hrgs. Bd., 151 Wn.2d 568, 587, 90 P.3d 659 (2004); Motley Motley v. Ecology, 127 Wn. App. 62, 71-71, 110 P.3d 812 (2005). “In the absence of ambiguity, we will give effect to the plain meaning of the statutory language.” In re Marriage of Schneider, 173 Wash.2d 353, 363, 268 P.3d 215 (2011). “When interpreting a statute, the court must first look to its language.” State v. Jones, 168 Wn.2d 713, 722, 230 P.3d 576 (2010); Cerrillo v. Esparza, 158 Wn.2d 194, 201, 142 P.3d 155 (2006). If a statute is clear on its face, “its meaning is to be derived

from the language of the statute alone.” Kilian v. Atkinson, 147 Wn.2d 16, 20, 50 P.3d 638 (2002). Where “the plain language of a statute is unambiguous and legislative intent is apparent, [the courts] will not construe the statute otherwise.” “Absent ambiguity, the Court does not defer to an agency’s interpretation of a statute.” Friends of Columbia Gorge, Inc. v. WA Forest Practices Appeals Bd., 129 Wn. App. 35, 47-48, 118 P.3d 354 (2005). An “agency’s interpretation [of its own regulations] does not bind [the court], and ‘deference to an agency is inappropriate where the agency’s interpretation conflicts with a statutory mandate.’” Puget Soundkeeper Alliance et al. v. WA Pollution Control Hearings Bd., Wn. App.P.3d , 2015 WL 4540664 (WA Ct. App. July 28, 2015) (quoting Dep’t of Labor & Indus. v. Granger, 159 Wn.2d 752, 764, 153 P.3d 839, (2007)).

Here, the board did not see and waived and the trial court erred in their statutory interpretations of RCW 34.05.310, RCW 34.05.312, RCW 34.05.370), RCW 34.05.570 (2) (b), RCW 34.05.570 (2) (c), RCW 34.05.562 and RCW 34.05.566 and RCW 34.05.375.

The trial court erred in its finding of facts and conclusions of law when it failed to give plain effect to the statutory mandates above. Worthington respectfully requests the Court of Appeals, in light of the entire record, do what the trial court should have done and substitute its judgment for that

of the Board, and conduct an analysis of the agency actions at issue under rules review statute that was cited in Worthington's petition for judicial review.

The board has not argued the rules review was not properly pled, it has argued it was not pled at all until the reply brief.⁷ Worthington respectfully argues the record does not support that conclusion. In fact, the record shows Worthington cited the rules review statute in every brief he filed.

The trial court erred in its findings of facts and conclusions of law by failing to invoke the rules review statute after Worthington cited them in his briefing. Worthington respectfully requests the COA make that rules review determination or remand this back to the trial court with a mandate for them to apply the rules review statutes and determine whether the board complied with RCW 34.05.310, RCW 34.05.312, RCW 34.05.370 and invalidated the rules for I-502 pursuant to RCW 34.05.375.

Ultimately, the trial court erred when it failed to conduct the rules review but did not err when it ruled the agency decision to deny Worthington's petition was arbitrary and capricious. Worthington respectfully requests the Court of Appeals, in light of the entire record, rule the Board failed to conduct a rules review inquiry under RCW 34.05.570 (2) (c). Worthington also respectfully requests the Court of

⁷ Neither was RCW 34.05.570 (4)

Appeals to make the ruling on the issue of violations of RCW 34.05. 315, RCW 34.05.370, RCW 34.05.325 and RCW 34.05.375, because a remand is futile since the Board has admitted it no longer has the original rulemaking file for the rules for I-502 the Board adopted in October of 2013. Worthington respectfully requests the Court of Appeals to rule the Board violated RCW34.05.310 and RCW 34.05.370, and invalidated the Rules for I-502 because the Board failed to comply with RCW 34.05.375.

E. The trial court erred in subsection I in the findings of facts and subsection II of the conclusions of law when it failed to give plain effect to the meaning of RCW 34.05.566 and RCW 34.05.562 and require the agency to provide an agency record of the agency actions at dispute.

The trial court erred when it made it the responsibility of Worthington to object to the rulemaking file not being part of the record.⁸ Even though this ruling is not part of the findings of facts and conclusions of law, the trial court made this oral ruling. The trial court also erred when it ruled that Worthington should have supplemented the record with the agency rulemaking file. Again, this was another oral ruling left out of the trial courts finding of facts and conclusions of law. The trial court's ruling was not supported by the record.

⁸ Worthington did note and object to the failure to provide an adequate agency record in his briefing. CP 17, CP 19, CP 30-31, CP 578

Once Worthington complied with RCW 34.05.546 (4) and identified the rulemaking file as an agency action at issue, **by law** the Board was required to provide the rulemaking file. As shown below in RCW

34.05.566: Agency record for review:

- (1) Within thirty days after service of the petition for judicial review, or within further time allowed by the court or by other provision of law, the agency shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action. The record shall consist of any agency documents expressing the agency action, other documents identified by the agency as having been considered by it before its action and used as a basis for its action, and any other material described in this chapter as the agency record for the type of agency action at issue, subject to the provisions of this section.

By the trial court's own admission in its findings of fact ⁹⁹, the rulemaking file was an agency action at issue and it was required by law to be part of the agency record. The statute does not state any requirements for the party challenging an agency action to either object to the failure of the agency to provide the agency record for the type of agency action at issue, nor does it state any requirements for the challenging party to supplement the agency record. The trial court then erred by failing to remand the case back in order to provide an adequate agency record pursuant to RCW 34.05.562 (2) (a), and 34.05.562 (2) (c) which read in relevant part: **New evidence taken by court or agency:**

⁹⁹ CP 618-624

(2) The court may remand a matter to the agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs, if:

(a) The agency was required by this chapter or any other provision of law to base its action exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;

(c) The agency improperly excluded or omitted evidence from the record; or

The trial court erred when it added words to the agency record statute and rendered other parts of the statute meaningless. (See *Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003) (“courts must not add words where the legislature has chosen not to include them.”); *Duke v. Boyd*, 133 Wash. 2d 80,942 P.2d 351 (1997). (court may not add words to statute even if it believes the legislature intended something else but failed to express it). “Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” *Whatcom County v. City of Bellingham*, 128 Wash.2d 537,546,909 P.2d 1303 (1996)

Under the Board and trial court’s interpretation of the statute, an individual challenging an agency action would be required to ensure the agency record is provided. But such a reading would lead to unlikely, absurd, and strained interpretations of RCW 34.05.566, which courts are

to avoid. *U-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 313, 237 P.3d 256 (2010). In the Board's interpretation, an agency would be able to frustrate a judicial review of an agency action by skirting the statutory requirement to provide the agency records of the agency action at dispute. "There is a presumption in favor of the trial court's findings, and appellant has the burden of showing that a finding of fact is *not* supported by substantial evidence." *Fisher Properties, Inc. v. Arden-Mayfaair, Inc.*, 115 Wn.2d 364, 369-70, 798 P.2d 799, 803 (1990) (affirming findings of trial court). Substantial evidence is an amount of evidence that is sufficient to persuade a fair minded person of the truth of the declared premise. *Fred Hutchinson Cancer Research Center v. Holman*, 107 Wn.2d 693, 712, 732 P.2d 974, 985 (1987) (affirming findings of fact which have support in the record). Findings of fact should be approved unless they are shown to be "against the weight of the evidence." *Id.* at 710, 732 P.2d at 984.

(The court reviews routine findings of fact under the "clearly erroneous" standard of review in light of the entire record.) *Cascade Nursing Servs. v. Employment Sec. Dep't*, 71 Wn. App. 23, 29, 856 P.2d 421 (1993).

Here, neither Worthington nor the Board had the rulemaking file that existed when the agency action at dispute was taken in October of 2013. Even if the trial court's flawed statutory interpretation that it was Worthington's job to object and then provide an agency record was

correct, the Board admitted the agency rulemaking file that existed at the time of the agency action in October of 2013 no longer existed, so any Judicial review of an agency action in October of 2013 or prior to that date would have been impossible. The trial court erred when it did not invalidate the rules for I-502, and when it allowed the Board refuge from the statutory requirement to provide an agency record of the agency actions it admitted in its findings of facts were identified as agency actions at issue. **CP 618-624**

The COA should reverse the trial court's ruling, because the ruling added words to the agency record statute, rendered portions of RCW 34.05 meaningless and superfluous and the ruling leads to an absurd result. (See *Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003) ("courts must not add words where the legislature has chosen not to include them."); *Duke v. Boyd*, 133 Wash. 2d 80, 942 P.2d 351 (1997). (court may not add words to statute even if it believes the legislature intended something else but failed to express it). "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Whatcom County v. City of Bellingham*, 128 Wash.2d 537, 909 P.2d 1303 (1996)

The trial court's findings of facts and conclusions of law were against the weight of the evidence and have no support in the entire record. The

trial court's ruling should be overturned and the Court of Appeals should declare that the rules for I-502 are invalid because the agency no longer has the rulemaking file that existed at the time the rules for I-502 were developed or in the alternative remand the matter to the agency to find the original rulemaking file pursuant to RCW 34.05.562.

F. The trial court erred in its findings of facts subsection I and conclusions of law in subsection II, when it failed to give effect to the plain meaning of RCW 34.05.312, RCW 34.05.370 and RCW 34.05.375 and invalidate the rules for I-502, after the Board had admitted it no longer had the rulemaking file that existed when the Board developed its rules in October of 2013.

Karen McCall admitted she violated RCW 34.05.312 and RCW 34.05.370, after she admitted removing documents from the rulemaking file to create an ultra vires "final" copy of the rulemaking file, without the Board's consent. McCall admitted it again when she stated she permanently created a new rulemaking file creating a temporary agency record in another APA case. Bob Schreoter confirmed the Board had no original rulemaking file. **CP 210-229, CP 237-240, CP 405-455.** This is after the Thurston County Superior court Judge Christine Schaller ruled that there was no such thing as a working copy of a rulemaking file and ruled the Board waived the attorney client privilege on many documents and stated they were now part of the public file. **CP 456-493.** Rather than maintain that file, the board employees above, without approval from the

three board members created an ultra vires rulemaking file and invalidated the rules for I-502 pursuant to RCW 34.05.375.

The trial court failed to uphold the statutory requirements under RCW 34.05.312, and RCW 34.05.370, which requires the rulemaking agency to maintain a rulemaking file by retaining all documents placed in the file. Board employees admitted they removed documents from the rule making file after the rules for I-02 were developed in October of 2013. By statute, the trial court had no other alternative but to invalidate the rules for I-502. The trial court erred when it failed to give effect to the plain meaning of RCW 34.05.312, RCW 34.05.370, and RCW 34.05.375. "In the absence of ambiguity, we will give effect to the plain meaning of the statutory language." *In re Marriage of Schneider*, 173 Wash.2d 353, 363, 268 P.3d 215 (2011). "When interpreting a statute, the court must first look to its language." *State v. Jones*, 168 Wn.2d 713, 722, 230 P.3d 576 (2010); *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155 (2006). If a statute is clear on its face, "its meaning is to be derived from the language of the statute alone." *Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002). Where "the plain language of a statute is unambiguous and legislative intent is apparent, [the courts] will not construe the statute otherwise."

Here the statutes were clear on their face and there was no ambiguity. The Board was required by RCW 34.05.370 to keep all documents placed

into the rulemaking file, and when it admitted it did not, the trial court was required by the plain language of RCW 34.05.375 to invalidate the rules for I-502. The trial court erred when it failed to give effect to the plain meanings of RCW 34.05.370, and RCW 34.05.375. "When construing statutes, the goal is to ascertain and effectuate legislative intent." *Bylsma v. Burger King Corp.*, 176 Wash.2d 555, 558, 293 P.3d 1168 (2013); *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 9, 43 P.3d 4 (2002). "In determining legislative intent, we begin with the language used to determine if the statute's meaning is plain from the words used and if so we give effect to this plain meaning as the expression of legislative intent." *Manary v. Anderson*, 176 Wash.2d 342, 350, 292 P.3d 96 (2013); *Campbell & Gwinn*, 146 Wash.2d at 9, 43 P.3d 4. The plain meaning "is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Campbell & Gwinn*, 146 Wash.2d at 11, 43 P.3d 4

The trial court also erred when it rendered RCW 34.05.370 (h) meaningless, and superfluous. "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Whatcom County v. City of Bellingham*, 128 Wash.2d 537, 546, 909 P.2d 1303 (1996) The trial court also erred when it created an absurd result where an agency could make rules from one

rulemaking file and then create another rulemaking file for the public. .

Courts avoid interpreting a statute that leads to an absurd result. (See SEIU Healthcare 775NW v. Gregoire, 229 P.3d 774 (2010). The trial court erred when it did not rule the agency rule was invalid because the rulemaking file that existed when the rule was adopted no longer existed. “The validity of a rule is determined as of the time the agency adopted it.” RCW 34.05.562 (1), .570 (1) (b); Wash. Indep. Tel. Ass’n v. Wash. Utils. & Transp. Comm’n, 148 Wash.2d 881, 906, 64 P.3d 606 (2003). Here, the validity of the rule cannot be determined because the agency no longer has the rulemaking file that existed at the time the rules were developed.

The COA should reverse the trial court’s ruling, because the trial court’s ruling failed to give effect to the plain meaning of RCW 34.05.312, RCW 34.05.370 and RCW 34.05.375. The trial court erred adding words to the RCW 34.05.370, rendered portions of RCW 34.05.370 meaningless and superfluous and the ruling leads to an absurd result. The trial court’s findings of facts and conclusions of law were against the weight of the evidence and have no support in the entire record. The trial court’s ruling should be overturned and the Court of Appeals should declare that the rules for I-502 are invalid because the agency no longer has the rulemaking file that existed at the time the rules for I-502 were developed. **CP 210-229, CP 237- 240, CP 495-498.**

The trial court also erred when it failed to rule on Worthington's rulemaking challenge and failed to uphold RCW 34.05.312, RCW 34.05.370 and RCW 34.05.375, and invalidate the rules for I-502 due to violations of those statutes. Worthington should have prevailed on his claims the rules for I-502 were invalid pursuant to RCW 34.05.375, because the Board in failing to see these allegations, failed to make any reasoned arguments and gave passing treatment to Worthington's specific allegations of violations under the RCW 34.05.312 and RCW 34.05.370. In defense of Worthington's issues under RCW 34.05.312 and RCW 34.05.370., the board did not give a reasoned response to the issues raised and averred Worthington only made one claim under the appearance of fairness doctrine. Therefore, with the board having failed to make a reasoned arguments and by giving passing treatment to Worthington allegations the Board violated RCW 34.05.312 and RCW 34.05.370 , the issues are verities on appeal. "Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." *West v. Thurston County*. 16R Wn. App. 162. 187.275 P.3d 1200 (2012); *Holland v. City of Tacoma*. 90 Wn. App. 533. 538.954 P.2d 290 (1998). The rules for I-502 should be invalidated by the COA and the case should be remanded back to the agency to conduct legal rulemaking for I-502.

G. The trial court erred in subsection I of its findings of facts and subsection II of the conclusions of law when it failed to give effect to the plain meaning of RCW 34.05.310 and RCW 34.05.375 and invalidate the rules for I-502 after the Board failed to list its rulemaking partners in the pre-notice inquiry.

The Washington State Department of Health (DOH) through its Environmental Public Health Division has shown that they are working on rules for marijuana infused products with the WSLCB.¹⁰ The DOH worked on rules with WSLCB and they should have been listed in the pre-notice inquiry but they were not. The WSLCB never explained how they would coordinate the contemplated rule with DOH. The initiative states the DOH would be consulted but the Environmental Public Health Division's work on the initiative is not in the rulemaking file. The DOH regulated the subject of retail food safety and should have been identified in the pre-notice inquiry for all marijuana edible rules. WSLCB violated RCW 34.05.310 (iii), when they did not list the DOH in the pre-notice inquiry for the development of rules for marijuana infused products, and hid all the input from the public so the DOH comments could be reviewed and rebutted. The Washington State Department of Agriculture (AGR) also worked on I-502 rules.¹¹ Although the initiative only required consulting with AGR, the ACLU interpreted the role as a rulemaking

¹⁰ CP 65, CP91, CP 93

¹¹ CP 69-88

function. Whatever the AGR role was, the consultation was not in the rule making file and the WSLCB never explained the process how they would coordinate the contemplated rule with AGR. The AGR regulates many rules regarding growing agriculture products for human consumption and should have been identified in the pre-notice inquiry for all marijuana edible rules. WSLCB violated RCW 34.05.310 (iii), when they did not list the AGR in the pre-notice inquiry for the development of rules for marijuana infused products. Prior to the election, internal and external teams were set up to implement I-1183 and I-502. The External Team agencies were: the Washington State Patrol (WSP), Washington State Department of Revenue (DOR), Washington State Department of Health (DOH), Washington State Department of Agriculture (AGR), Washington State Department of Social and Health Services (DSHS) and the Washington State Attorney General's Office (ATG). None of these "I-502 partners" were ever identified by any pre-notice inquiry, and most of their work and comments were not placed in the rulemaking file. Worthington was required to make PRA requests to the "external team" well after the I-502 rules were developed to determine their input on I-502 rules. Since the WSLCB chose to meet with these teams in its regular board meetings identified as an "interagency group" and did not identify them in the pre-notice inquiry or place their comments in the rulemaking file, Worthington

was unable to review and rebut any comments made by any external team members at a time required by RCW 34.05. As shown above, the WSLCB failed to identify all state agencies working on I-502 rules and comply with RCW 34.05.310¹² (iii), and RCW 34.05.310 (iv). (CP 107)

At some point after the initiative was passed and rulemaking was about to begin, there was a partnership formed between the following agencies: (WSLCB) Association of Washington Cities (AWC), Washington State Association of Counties (WSAC), Washington Association of Prosecuting Attorneys (WAPA), Washington Association of Sheriffs and Police Chiefs (WASPC), Municipal Research and Services Center (MRSC), and Washington Association of County Officials, (WACO) Washington Association for Substance Abuse and Violence Prevention (WASAVP). The “partnership” is identified in the written notes from one of the many AWC I-502 webinars. Further references of the partnership is also detailed in letters from AWC CEO Mike McCarty in June 4, 2015 and October 4, 2015. On January 15, 2013. That Partnership joined state agencies to form a Meta Organization that already included the internal and external implementation team shown above. The Meta Organization joins forces to makes rules for I-502. Proof of a “partnership” is all over the internet.

¹² Worthington cited this statute on AR 63.

There were state agency partners **CP 69-78, CP 89-93 CP 107-108**, and a partnership with the Association of Washington Cities (AWC) (**CP 137, CP 143**) Washington Sheriffs and Police Chiefs (WASPC) (**CP 139**), Washington State Patrol (**CP 136**) and others **CP123-133**. Some of the partners actually started working on I-502 implementation prior to the initiative even passing. (**CP 107**)

The Board could have worked with these groups in negotiated rulemaking, but they choose to create a “Information sharing forum,”¹³ and “separate process to get info,”¹⁴ because “some may not want a public discussion.”¹⁵ When the Board failed to list its partners in the pre-notice inquiry,¹⁶ the board failed to abide by the express terms of RCW 34.05.312, and violated RCW 34.05.375. The trial court erred when it failed to uphold RCW 34.05.310 and RCW 34.05.375 and invalidate the rules for I-502 due to violations of RCW 34.05.310. The Court of Appeals should invalidate the rules for I-502. Worthington should have prevailed on his allegations of violations of RCW 34.05.310, because the Board in failing to see them, failed to make any reasoned arguments and gave passing treatment to Worthington’s specific allegations of violations under

¹³ **CP 109**

¹⁴ **CP 147**

¹⁵ **CP 146**

¹⁶ **CP 51-58**

the RCW 34.05.310. In defense of Worthington's allegations of violations under the RCW 34.05.310, the board did not give a reasoned response to the issues raised and averred Worthington only made one claim under the appearance of fairness doctrine. Therefore, with the board having failed to make a reasoned arguments and by giving passing treatment to Worthington allegations of violations under the RCW 34.05.310, the issues are verities on appeal. "Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." *West v. Thurston County*, 16R Wn. App. 162, 187.275 P.3d 1200 (2012); *Holland v. City of Tacoma*, 90 Wn. App. 533, 538.954 P.2d 290 (1998). The rules for I-502 should be invalidated by the COA and the case should be remanded back to the agency to conduct legal rulemaking for I-502.

H. Worthington has UDJA standing

The Supreme Court has previously recognized taxpayer standing to challenge governmental acts. *State ex rel. Boyles v. Whatcom County Superior Court*, 103 Wn.2d 610, 694 P.2d 27 (1985). ("This court recognizes litigant standing to challenge governmental acts on the basis of status as a taxpayer."); *Greater Harbor 2000 v. City of Seattle*, 132 Wn.2d 267, 281,937 P.2d 1082 (1997) ("The recognition of taxpayer standing has been given freely in the interest of providing a judicial forum for citizens to contest the legality of official acts of their government") *Worthington*

requested the AG, Governor, and Auditor to act on his complaints that laws were broken during the rulemaking process for 1-502.¹⁷

Worthington's request fell on the deaf ears of two co-conspirators and an auditor under siege and afraid to act. Because none of the proper authorities acted upon Worthington's complaint, he can proceed in their stead. "The Supreme Court held:" (1] "We hold that our decision in *Reiter v. Wallgren*, *supra*, is controlling here on the issue of relators' right to maintain this action." "Since, prior to instituting the 'present mandamus proceeding, they had demanded that the attorney general take legal steps to cure the alleged illegal actions on the part of respondents and since the attorney general had refused to act, relators are entitled to bring this action, and thus they have capacity to sue." (See *In State ex rel. Lemon v. Langlie*, . 45 Wn.2d 82,273 P.2d 464 (1954) In *Fransen*, *supra*, the Supreme Court cited *Reiter v. Wallgren*, 28 Wn.2d 872, 184 P.2d 571 (1947); *State ex rel. Lemon v. Langlie*, 45 Wri.2d 82,273 P.2d 464 (1954), and *State ex rel. Tattersall v. Yelle*, 52 Wn.2d 856, 329 P.2d 841 (1958). "The court therein permitted a taxpayer to maintain an action"

Arguably, the entire case falls under the UDJA, because the agency conducted most of its "partnership" activity outside the realm of the APA.

¹⁷ CP 43-50

The APA only covers the rulemaking agency and is not to sole remedy for a shadow government taking over agency rulemaking to conduct a secret rulemaking process. The Board did not see this claim and waived standing arguments at the trial court. Or gave passing and unreasoned arguments which did not merit judicial consideration. “Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.” West v. Thurston County. 16R Wn. App. 162. 187.275 P.3d 1200 (2012); Holland v. City of Tacoma. 90 Wn. App. 533. 538.954 P.2d 290 (1998).

- I. The trial court erred in its finding of facts in subsection III, and its conclusions of law in subsection IV, and V, when it did not provide injunctive relief to stop the “Partnership”, the Attorney General’s office, Governor’s Office, State Policy Enhancement (SPE) and Results Washington, from interfering with the I-502 rulemaking process.**

This case also involves an action brought for declaratory relief under RCW 7.24, the Uniform Declaratory Judgments Act. Worthington maintains that the issue of whether the rulemaking process for I-502 is constitutional, when it was obviously taken over by powerful and influential entities acting outside the APA, is a matter of overwhelming and widespread importance, critical to ensuring the public trust in the democratic process, and as such, the Court's power to decide this case is

governed by the clearly established precedent of *Farris v. Munro*, 99 Wn. 2D 326, 662 P.2d 821, (1982). As the Supreme Court held in *Farris* ...

Despite petitioner's failure to satisfy... standing requirements¹⁸, he raised an issue vital to the state revenue process... Thus, the case presented issues of significant public interest that, by analogy to other decisions, allow this court to reach the merits."

The remedial nature of the UDJA also supports such a determination, in that the Legislature expressly declared RCW 7.24 to be a remedial statute as shown below in relevant part:

This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.

In addition to the legislature, the Supreme Court of the State of Washington has declared that liberal construction is required for such remedial statutes.

A liberal construction requires that the coverage of the act's provisions "be liberally construed and that its exceptions be narrowly confined." *Hearst Co. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978)

Liberal construction of a statute "implies a concomitant intent that its exceptions be narrowly confined." *Mead Sch. Dist. No. 354 v. Mead Educ. Ass'n*, 85 Wn.2d 140, 145, 530 P.2d 302 (1975). *Miller v. City of Tacoma*, 138 Wn.2d 318, at 324, (1999) Under the remedial provisions of

¹⁸ The record does not show that the Respondents challenged Worthington's standing.

Washington's Uniform Declaratory Judgments Act, a person whose rights, status, or other legal relations are affected by a statute may have any question concerning the construction of that statute determined by the court. *Branson v. Port of Seattle*, 152 Wn.2d 862,877, 101 P.3d 67 (2004). Specifically, RCW 7.24.020 reads, in part, as follows:

"A person ... whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

In accord with the intent of the Legislature, this Court has determined that the UDJA is to be liberally construed and is designed to clarify uncertainty with respect to rights, status, and other legal relations. *DiNino v. State*, 102 Wn.2d 327 , 330, 684 P.2d 1297 (1984). This is especially necessary when the issue concerns matters of broad importance involving trade, industry and commerce, as is the case with the rules to sell marijuana in Washington State. The UDJA should not and cannot in accord with a liberal construction require any showing of harm or damage for "any person" to compel his government to act openly as required by law.

Here, declaratory and injunctive relief was necessary in order to address rulemaking obstructions outside the purview of the APA. The AG and Governor's Offices are in legal and supervisory roles superior

to that of an agency. There simply is no mechanism in the APA to enjoin superior agencies or an executive order from interfering with future rulemaking. Similarly, Results Washington¹⁹ requires cross agency collaboration on policy. In this case marijuana policy came under the heading of goal 4. It is impossible for agency directors to comply with goal 4 and Executive Order 13-04 subsections b-f, and the APA at the same time. The Executive Order requires the rulemaking agency to conduct “cross agency collaboration,” to develop marijuana rules and policy²⁰. The APA requires the collaboration of all stakeholders at the same time. The record clearly shows that the “cross agency collaboration” was done outside the APA and with a purpose to influence rules for I-502 in order to reach the desired outcomes stated under goal 4. **CP 500-522**

While in theory it may not have been intended for Results Washington to segregate stakeholders from the rulemaking process under the APA, in practice, that is exactly what took place. The same holds true for the State

¹⁹ http://www.governor.wa.gov/sites/default/files/exe_order/eo_13-04.pdf
<http://www.results.wa.gov/>

²⁰ Both marijuana policy and rules were developed in “collaborations” using chain and serial emails and then collaborated through the Agency directors. These “collaborations” violate both the spirit and intent of both the APA and OPMA.

Prevention Enhancement (SPE) Policy Consortium.²¹ This is yet another layer of “cross system collaboration,” even more troubling than Results Washington. The SPE, by virtue of its federal funding, converted the participating agencies, including the Washington State Liquor and Cannabis Board, into loaned federal employees and borrowed servants, tasked to create state policies that are in line with federal policies. These loaned federal employees admitted they were targeting I-502 rulemaking in their action plans. **CP 500-522**

The Results Washington and SPE policy goals give the Board a huge conflict of interest when it comes to marijuana policy and rulemaking, and the trial court should have protected the rulemaking for I-502 and provided declaratory and injunctive relief to stop these mandated “cross agency collaborations.” Government acting unconstitutionally damages each citizen, and as such any member of the public has standing to challenge and is especially necessary when the effect of an unconstitutional initiative rulemaking process has been to give a special and privileged group of stakeholders with interests and goals opposite to that of Worthington, a separate rulemaking process that was obviously withheld from the public including Worthington. Declaratory and

²¹<http://theathenaforum.org/sites/default/files/SPE%20Resource%20Assessment%20v7.27.12.pdf>

Injunctive relief under the UDJA is the only remedy to protect the APA from outside partnerships and collaborations. The substantial evidence Worthington provided does not support the trial court's findings of fact, and in turn, those findings do not support the conclusions of law and judgment. (See generally *Organization to Preserve Agricultural Lands v. Adams County*, 128 Wn.2d 869, 882, 913 P.2d 793, 801 (1996). The trial court's findings of facts and conclusions of law were against the weight of the evidence and have no support in the entire record. The trial courts ruling should be overturned and the Court of Appeals should declare that; the rules for I-502 are invalid, that, the "partnership", Results Washington, and the SPE interfered with the rule making process for I-502. In the Orders and Judgment of the court, the trial court erred in failing to construe the UDJA in accord with its remedial intent. The trial courts ruling should be overturned and the Court of Appeals for Division II should invalidate the rules for 502 and remand the case back to the agency to conduct legal rulemaking in compliance with the APA. Worthington respectfully requests guide rails in the form of injunctions to prevent a shadow rulemaking procedures by enjoining the Board from participating in results Washington and the SPE, and injunctions to the AG and Governor's office to prevent rulemaking activity under the guise of attorney client privilege and with the Governor's policy office. State

agency actions are also subject to due process requirements under the U.S. and Washington State Constitutions. See *Mathews v. Eldridge*, 424 U.S. 319, 334-35, 96 S. Ct. 893, 47 L.Ed. 2d 18 (1976).

Worthington should have prevailed on his UDJA claims because the Board in failing to see them failed to make any reasoned arguments and gave passing treatment to Worthington's specific allegations of violations under the UDJA. In defense of Worthington's UDJA issues, the board did not give a reasoned response to the issues raised and averred Worthington only made one claim under the appearance of fairness doctrine. Therefore, with the board having failed to make a reasoned arguments and giving passing treatment to Worthington UDJA allegations, the trial court erred in its findings of facts and conclusions of law by giving judicial consideration to the boards opposition to Worthington's UDJA claims. "Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." *West v. Thurston County*. 16R Wn. App. 162. 187.275 P.3d 1200 (2012); *Holland v. City of Tacoma*. 90 Wn. App. 533. 538.954 P.2d 290 (1998). The trail court erred in its finding of facts and conclusions of law when it failed to liberally construe the Uniform Declaratory Judgments Act in accord with its remedial intent to resolve an existing controversy of substantial public importance. "A trial court

abuses its discretion if its decision is based on untenable grounds or reasons.”

J. The trial court did not err in subsection II in the findings of facts and subsection III in the conclusions of law when it determined the Board’s decision to deny Worthington’s petition was arbitrary and capricious.

The Board was required to show a process of reason. Here, the only process of reason shown is the general recommendation of staff to deny Worthington’s petition. **CP 599-600.** It would be a true process of reason if WSLCB staff would have said it looked at the rulemaking file, and looked at RCWs 34.05.310, 34.05.370, 34.05.325 and determined the Board complied with the statutes. The agency record does not show that process of reason took place. The agency record shows the process of reason was limited to a conclusory statement the agency complied with RCW 434.05.375 and that Worthington failed to cite any rules to be repealed. The trial court’s remand to get a more thoughtful answer was proper and supported by the record. “After a trial court has weighed the evidence, appellate review is limited to a determination of whether substantial evidence supports the trial court's findings of fact, and whether, in turn, those findings support the conclusions of law and judgment.” *Organization to Preserv Agricultural Lands v. Adams County*, 128 Wn.2d 869, 882, 913 P.2d 793, 80 1 (1996) (speculation undermining findings of

facts did not warrant overturning the finding); *Nichols Hills Bank v. McCool*, 104 Wn.2d 78, 82, 701 P.2d 1114, 1116 (1985) (affirming trial court's dismissal of action); *Ridgeview Properties v. Starbuck*, 96 Wn.2d 716, 719-20, 638 P.2d 1231, 1233-4 (1982) (affirming trial court findings which were supported by record)

Here, the Board failed to show the substantial evidence did not support the trial court's findings of fact, and thus failed to show the trial court findings did not support the conclusions of law and judgment regarding the trial court ruling. "Administrative action is arbitrary and capricious if it is willful, unreasoned, and taken without regard to the attending facts and circumstances." *Dept. of Ecology v. Theodoratus*, 135 Wn.2d 582, 598, 957 P.2d 1241, (1998); *Skokomish Indian Tribe v. Fitzsimmons*, 97 Wn. App. 84, 92-94, 982 P.2d 1179 (1999). The Board failed to show it had evaluated the rulemaking file for the rules adopted in October of 2013. The board also failed to show it had evaluated the acts of the partnership and whether it complied with the requirement to list its partners in the pre notice inquiry. The Board cannot show on the record they evaluated any statute outlined in RCW 34.05.375. The agency record shows the Board denied the petition at the suggestion of staff, but the Board shows no process of reason staff applied to RCW 34.05.310, RCW 34.05.315, RCW 34.05.325, and RCW 34.05.370. The Board failed to

meet the standards of the accepted process of reason shown in *Squaxin Island Tribe v. Washington State Dept. of Ecology*, 312 P.3d 766, 177 Wash.App. 734 (2013), and the arguments they did should be rejected.

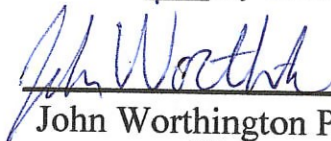
V. CONCLUSION

Based on the forgoing, and in the interest of judicial economy, Worthington requests the COA for Division II uphold the requirements of the (Administrative Procedure Act (APA) and declare the rules for I-502 are invalid for violating RCW 34.05.375. Worthington also requests the court issue a declaratory ruling under the Uniform Declaratory Judgment Act (UDJA), that the “Partnership,” Goal 4 Executive Order 13-04 Results Washington subsections 2 b-f, The Governor’s Office, the Attorney General’s Office, and federal grant recipients in the State Policy Enhancement (SPE), violated the Washington State Constitution, Worthington’s substantive due process rights, by granting privileges and immunities to a group of stakeholders with interests opposite to those of Worthington. Worthington also respectfully requests an injunction under the UDJA requiring modification of Results Washington Executive order 13-04 subsections 2 b-f ,to remove the Washington State Liquor and Cannabis Board as a participating agency and from “Cross agency collaborations” on marijuana rulemaking outside the realm of the APA, that, an order under seal of this court requiring the Board to file a 60 day

notice to withdraw from the SPE and any other federal grant which makes them "loaned" employees or "borrowed servants" to the federal government. Worthington also respectfully requests an injunction that enjoins the AG and Governor's office from orchestrating a shadow rule making process through cross agency collaborations or under the guise of attorney client relationships. Worthington also respectfully requests any relief this court believes is appropriate and supported by the record in this case.

Respectfully submitted this 14TH day of October, 2016

BY

A handwritten signature in blue ink, appearing to read "John Worthington", written over a horizontal line.

John Worthington Pro Se /Appellant
4500 SE 2ND PL.
Renton WA.98059

FILED
COURT OF APPEALS
DIVISION II
2016 OCT 14 PM 12:59
STATE OF WASHINGTON
BY _____
DEPUTY

Declaration of Service

I declare that on the date and time indicated below, I caused to be served Via personal service a copy of the documents and pleadings listed below upon the attorney of record for the defendants herein listed and indicated below.

1. APPELLANT'S OPENING BRIEF
2. APPENDICES

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE
1250 Pacific Ave, Suite 105
Tacoma WA. 98401

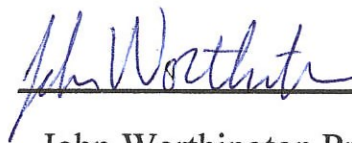
COA DIVISION II
950 Broadway, Suite 300
Tacoma, WA 98402

I declare under penalty of perjury under the laws of the United States that

the foregoing is True and correct.

Executed on this 14th day of October, 2016.

BY



John Worthington Pro Se /Appellant
4500 SE 2ND PL.
Renton WA.98059

APPENDIX A

ORIGINAL

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2016 MAY 20 AM 11:29

Linda Myhre Enlow
Thurston County Clerk

15-2-01139-9

OR

Order

283808



STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

JOHN WORTHINGTON,

Petitioner,

v.

WASHINGTON STATE LIQUOR
CONTROL BOARD, CHRIS MARR,
RUTHANN KUROSE, SHARON
FOSTER, RICK GARZA, STATE OF
WASHINGTON,

Respondents.

NO. 15-2-01139-9

~~PROPOSED~~
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

(Clerk's Action Required)

This matter came before the Court on May 6, 2016, before the above entitled court pursuant to the Washington Administrative Procedure Act; the Washington State Liquor and Cannabis Board was represented by ROBERT W. FERGUSON, Attorney General, R. JULY SIMPSON; JOHN WORTHINGTON appeared pro se. The Court, having reviewed the Administrative Record, pleadings on file, and having heard arguments, and in all premises being fully advised, hereby makes the following:

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~~PROPOSED~~ FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

1

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
1125 Washington Street, PO Box 40110
Olympia, WA 98504-0110
(360) 753-2702

1 FINDINGS OF FACT

2 I.

3 Worthington filed a petition for adoption, amendment repeal of rules under RCW
4 34.05.330 on April 20, 2015, requesting the Board to "repeal all rules involved with the
5 implementation of I-502." In support of this claim, Worthington argued that the Board violated
6 the Appearance of Fairness Doctrine, that the Board violated provisions of the APA (RCW
7 34.05.315, RCW 34.05.370, and RCW 34.05.325) by holding 17 secret meetings and that by
8 doing so violated RCW 34.05.375. Worthington also asserted that he was told the entire rule
9 making file did not exist and was updated after rulemaking was completed but that there is no
10 such thing as a "final rulemaking file."

11 II.

12 The Board denied Worthington's petition on June 10, ²⁰¹⁵ ~~2016~~. ^{ASB} In the Board's denial, the JH
13 Board stated "The Petition does not object to any particular rule, but only to the Board's rule
14 adoption process and alleged effect of the rules. Staff believes the proper rulemaking processes
15 were followed and the rules properly implement the initiative.

16 III.

17 Worthington appealed this agency action to the Superior Court requesting relief under the
18 Uniform Declaratory Judgment Act. Worthington also made new arguments not made before the
19 Board, including claims that the rulemaking process was unconstitutional. Worthington also
20 sought relief against non-agency parties including the Attorney General Bob Ferguson and
21 Governor Jay Inslee.

22 From the foregoing Findings of Fact, the court makes the following:

23 CONCLUSIONS OF LAW

24 I.

25 The court has jurisdiction over the parties and subject matter.
26

[PROPOSED] FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

II.

The Board's denial of Worthington's petition for rulemaking was other agency action reviewable under 34.05 RCW.

III.

The Board's statement that Worthington did not object to any particular rule is erroneous and therefore arbitrary and capricious.

IV.

The Uniform Declaratory Judgment Act cannot afford relief of agency action and no relief will be granted by this court under that statute.

This is a final judgment as to UDJA claims for purposes of CR 54(b).

Worthington did not meet the high burden of establishing the Board's rulemaking process was unconstitutional and, therefore, the Court will find no Constitutional violations.

VI.

The Appearance of Fairness Doctrine is inapplicable in the rulemaking context so there can be no violation of this Doctrine by the Board during rulemaking.

VII.

Relief is not appropriate under chapter 7.24 RCW because that chapter is not applicable to state agency action under 34.05 RCW.

VIII.

Relief is not appropriate under chapter 34.05 RCW against non-agency parties.

IX.

Under RCW 34.05.574 "in a review under RCW 34.05.570, the court may (a) affirm the agency action or (b) order an agency to take action required by law, order an agency to exercise discretion required by law, set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter a declaratory judgment order. The court shall set out in its findings and conclusions, as appropriate, each violation or error by the agency under the standards

AW ~~PROPOSED~~ FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

1 for review set out in this chapter on which the court bases its decision and order. In reviewing
2 matters within agency discretion, the court shall limit its function to assuring that the agency has
3 exercised its discretion in accordance with law, and shall not itself undertake to exercise the
4 discretion that the legislature has placed in the agency. The court shall remand to the agency for
5 modification of agency action, unless remand is impracticable or would cause unnecessary delay.

6 From the foregoing Findings of Fact and Conclusions of Law, the court enters the
7 following:

8 **ORDER**

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

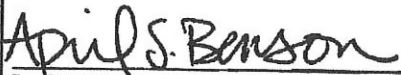
10 This matter is remanded to the the Washington State Liquor and Cannabis Board to issue a new
11 decision that will address each of Worthington's specific objections and concerns brought in his
12 Petition to the Board in a thoughtful manner. The Board is not required to address any arguments
13 not made originally before the Board as part of Worthington's original Petition. The Board does
14 not need to address the Appearance of Fairness doctrine because that doctrine is inapplicable in
15 the rulemaking context. The Court will not order relief against any non-agency party.

16 DATED this 20 day of May, 2016.


17
18 
19 JUDGE ANNE HIRSCH

20 Presented by:

21 ROBERT W. FERGUSON
22 Attorney General

23 
24 R. JULY SIMPSON, WSBA #45869
25 Assistant Attorney General
26 APRIL S. BENSON, WSBA #40766
Assistant Attorney General

[PROPOSED] FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

1 JEFFREY T. EVEN, WSBA # 20367
2 Deputy Solicitor General
3 Attorneys for Defendants
4
5 Approved as to Form:
6 
7 John Worthington
8 Pro Se
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[PROPOSED] FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

5

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
1125 Washington Street, PO Box 40110
Olympia, WA 98504-0110
(360) 753-2702

APPENDIX B

1
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3
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6
7 **STATE OF WASHINGTON**
THURSTON COUNTY SUPERIOR COURT

8 **JOHN WORTHINGTON,**
9 **Plaintiff,**

NO. 15-2-01139-9

10 **v.**

11 **WASHINGTON STATE LIQUOR**
12 **CONTROL BOARD, CHRIS MARR,**
13 **RUTHANN KUROSE, SHARON**
FOSTER, RICK GARZA, STATE OF
WASHINGTON,
Defendants.

INDEX OF CERTIFIED RECORD

NO.	DESCRIPTION	DATE	PAGES
1.	Email From: Karen McCall, Rules Coordinator To: John Worthington Attached Letter RE: Petition for Rulemaking Petition received April 21, 2015 Additional documents received May 19, 2015 Additional documents received May 23, 2015 Additional documents received May 29, 2015 Attached LCB Petition Decision Petition for Rulemaking to repeal current marijuana rules, dated June 10, 2015, presented by Karen McCall	6/11/15	1
2.	Email From: Karen McCall, Rules Coordinator To: John Worthington Re: Petition for Rulemaking	6/11/15	4
3.	Petition for Adoption, Amendment, or Repeal of a State Administrative Rule with attachments Petitioner: John Worthington	4/20/15	5
4.	Meeting Agenda Washington State Liquor Control Board Special	6/10/15	47

COPY

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2	5.	Meeting Minutes Washington State Liquor Control Board Special Meeting June 10, 2015, 10:00 a.m.	7/15/15	48
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4	6.	Sign in Sheet Washington State Liquor Control Board Meeting June 10, 2015, 10:00 a.m.	6/10/15	53
5				
6	7.	Partial Transcript of Washington State Liquor Control Board Special Meeting June 10, 2015, 10:00 a.m.	6/10/15	54
7				
8	Additional materials submitted by John Worthington in support of petition, with attachments			
9	8.	Email From: John Worthington To: Karen McCall, Rules Coordinator Re: Petition for Adoption Amendment Repeal	5/19/15	58
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11	9.	Email From: John Worthington To: Karen McCall, Rules Coordinator Re: PRR #15-02-161	5/23/15	65
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13	10.	Email From: John Worthington To: Karen McCall, Rules Coordinator Re: Petition for Adoption Amendment Repeal	5/23/15	110
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15	11.	Email From: John Worthington To: Karen McCall, Rules Coordinator Re: I-502 Rule Making File Tampered With	5/23/15	118
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17	12.	Email From: John Worthington To: Karen McCall, Rules Coordinator Re: PRR #15-02-161	5/23/15	120
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19	13.	Email From: John Worthington To: Karen McCall, Rules Coordinator Re: Petition for Adoption Amendment Repeal	5/23/15	173
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**Washington State
Liquor Control Board**

June 11, 2015

Mr. John Worthington

RE: Petition for Rulemaking

Petition received April 21, 2015

Additional documents received May 19, 2015

Additional documents received May 23, 2015

Additional documents received May 29, 2015

Mr. Worthington,

On April 21, 2015, you submitted a petition for rulemaking to repeal all marijuana rules and marijuana land use decisions adopted by the board in Chapter 314-55 WAC.

At the board meeting on June 10, 2015, the board denied your petition for rulemaking. The board believes the proper rulemaking processes were followed and the rules properly implement Initiative 502.

A copy of the Board's decision for your petition for rulemaking is attached.

Sincerely,

Karen McCall
Rules Coordinator
WSLCB
360-664-1631

Topic: Petition for Rulemaking to repeal current marijuana rules

Date: June 10, 2015

Presented by: Karen McCall

Problem or Opportunity

A petition for rulemaking was submitted by John Worthington, a private citizen. Mr. Worthington is requesting the board repeal all current rules adopted to implement Initiative 502. Mr. Worthington feels the board did not achieve the policy goals in Initiative 502. Mr. Worthington also feels the board violated RCW 35.05.375 which covers rulemaking procedures.

Background

This is the second petition from Mr. Worthington requesting the board repeal all rules adopted to implement Initiative 502. The current rules for recreational marijuana are found in chapter 314-55 WAC. The board adopted the original rules to implement Initiative 502 in October, 2013. Since then several revisions to those rules and new rules have been adopted.

Mr. Worthington has filed at least one lawsuit against the board challenging Initiative 502 and the rules adopted by the Board using the same basis included in the petition.


Recommendation

Director's Office staff recommends the board deny the petition for rulemaking for the following reasons:

- The Petition does not object to any particular rule, but only to the Board's rule adoption process and alleged effect of the rules. Staff believes the proper rulemaking processes were followed and the rules properly implement the initiative.

____ Approve

☒ Disapprove


Jane Rushford, Chairman

6-10-15
Date

____ Approve

____ Disapprove


Ruthann Kurose, Board Member

6-10-15
Date

____ Approve

☒ Disapprove


Russ Hauge, Board Member

6/10/15
Date

Mr. Woods then invited Officer Donald Stadoia, Tacoma Community Liaison, Lieutenant Mark Feddersen, Tacoma Police Department, to come forward and provide comments on behalf of the petition.

Lieutenant Feddersen stated that they have the full support of the community and commended Officer Don Stadoia for his hard work on the AIA process.

Chair Rushford asked for clarification regarding the listed energy drinks.

Officer Stadoia provided a briefing on energy drinks including WAC definitions. He noted that they will continue to clarify and refine the language in their proposed AIA.

Mr. Woods then requested that the Board approve the City's petition and open the public comment period for the Tacoma West End AIA.

The Board approved the petition, and Chair Rushford noted that this opens the 30 day comment period.

ACTION ITEM 3B - Board Decision on Amendment to Suquamish Tribe Memorandum of Agreement (Alcohol)

Sharon Hendricks, Policy & Compliance Manager, began the briefing with materials (HANDOUT 3B 1). She provided background noting that the Suquamish Tribe has requested approval of a proposed amendment to their current alcohol Memorandum of Agreement (MOA) involving the addition of a hotel branch. The amendment has been reviewed by staff, and Ms. Hendricks indicated that there are no concerns with the proposal.

Ms. Hendricks then requested the Board approve the Suquamish Tribe MOA amendment as submitted.

MOTION: Member Hauge moved to approve the Suquamish Tribe MOA amendment.

SECOND: Chair Rushford seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 3C - Board Decision on Petition for Rulemaking - Repeal Marijuana Rules

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 3C 1-2). She provided a brief background noting that a petition for rulemaking was submitted by John Worthington, a private citizen. Mr. Worthington requested that the Board repeal all current rules adopted to implement Initiative 502. Mr. Worthington feels the Board did not achieve the policy goals in Initiative 502 and thinks the Board violated RCW 35.05.375 which covers rulemaking procedures.

This is the second petition from Mr. Worthington requesting the Board repeal all rules adopted to implement Initiative 502. The current rules for recreational marijuana are found in Chapter 314-55 WAC. The Board adopted the original rules to implement Initiative 502 in October, 2013. Since then several revisions to those rules and additional rules have been adopted. Mr. Worthington has filed at least one lawsuit against the board challenging Initiative 502 and the rules adopted by the Board using the same basis included in the petition.

Ms. McCall stated that LOD staff recommends that the Board deny the petition for rulemaking as the Petition does not object to any particular rule, but only to the Board's rule adoption process and alleged effect of the rules. The proper rulemaking processes were followed and the rules properly implement the initiative.

MOTION: Member Hauge moved to deny the Petition for Rulemaking to Repeal the Marijuana Rules.

SECOND: Chair Rushford seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 3D - Board Decision on Petition for Rulemaking - Change Buffer Zone for Marijuana Licensing

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 3D 1-2). She provided a brief background noting that this petition for rulemaking was submitted by William Zosel, President of the Central Area Neighborhood District Council (CANDC). Mr. Zosel requests the Board revise the 1000 foot buffer requirement to prevent clustering of licensed retail marijuana stores.

Ms. McCall stated that LCB staff recommends that the Board deny the petition for rulemaking as RCW 69.50.331 (8) states the Board may not issue a marijuana license within 1000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older. The Board cannot change the law through rule.

MOTION: Member Hauge moved to deny the Petition for Rulemaking - Change Buffer Zone for Marijuana Licensing.

SECOND: Chair Rushford seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 3E - Board Approval to File (CR 101) for Penalty Guidelines

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 3E 1-2). She provided a brief background noting that this is part of the Liquor Control Board's on-going rules review process, Chapter 314-29 WAC is being reviewed for relevance, clarity, and accuracy.

Ms. McCall then requested approval from the Board to file proposed rules.

MOTION: Member Hauge moved to approve filing the (CR 101) for Penalty Guidelines.

SECOND: Chair Rushford seconded.

ACTION: Motion passed unanimously.

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7 STATE OF WASHINGTON
LIQUOR AND CANNABIS BOARD

8 JOHN WORTHINGTON,
9 PETITION FOR RULEMAKING

VERBATIM TRANSCRIPT OF
JUNE 10, 2015 SPECIAL BOARD
MEETING

10 10:00 a.m.

11 1. CALL TO ORDER

12 CHAIR RUSHFORD: Good morning everyone. Thank you for being here today and
13 as always thank you to the staff for preparing the board so well for the agenda that we have
14 before us.

15 10:13 a.m.

16 ACTION ITEM 3C - Board Decision on Petition for Rulemaking - Repeal Marijuana
Rules

17 KAREN MCCALL: Good morning Chair Rushford and Member Hauge, I have several
18 things for you today. The first item I would like to bring to you today is we received a petition
19 for rulemaking from John Worthington, requesting that the board repeal all the current
20 marijuana rules that they have adopted. Um he feels the board did not achieve the policy goals
21 in Initiative 502 and also believes we violated RCW 35.05.375 which covers rulemaking
22 procedures. This is the second petition from Mr. Worthington requesting that the board repeal
23 all the rules adopted to implement Initiative 502 all these rules are found in Chapter 315-55
24 WAC. Um we adopted the original rules in 2013, October 2013 and we've continually revising
25 those rules and adopting new rules since then. Um Mr. Worthington has filed at least one
26

1 lawsuit against the board challenging initiative 502 and the rules adopted by the board using
2 the same basis included in this petition. Um were recommending that the board deny the
3 petition for rule making for the following reason, the petition does not object to any particular
4 rule, but only to the boards rule adoption process and alleged effect of the rules. We believe
5 the proper rule making processes were followed and the rules properly implementing the
6 initiative. Do you have any questions?
7

8 MEMBER HAUGE: No

9 MS. MCCALL: I did include all of the a documentation that Mr. Worthington had sent
10 in this time.
11

12 CHAIR RUSHFORD: Thank you Karen.

13 MEMBER HAUGE: I move that we a deny the petition for rule making.

14 CHAIR RUSHFORD: Seconded, so moved.
15

16 10:47 a.m.

17 ADJOURN

18 CHAIR RUSHFORD: Is there anyone else today that would like to make a comment
19 that did not sign the list, this is new we are going to ask people to do this so that we have a
20 record from um from most, but we will not just cut it off if someone missed so anything
21 additionally today? Member Hauge?

22 MEMBER HAUGE: No, thank you.

23 CHAIR RUSHFORD: With that this meeting stands adjourned.
24
25
26

at the rule-making hearing, unless the agency head presided or was present at substantially all of the hearings. The summarizing memorandum is a public document and shall be made available to any person in accordance with chapter 42.56 RCW.

(5) Rule-making hearings are legislative in character and shall be reasonably conducted by the presiding official to afford interested persons the opportunity to present comment individually. All comments by all persons shall be made in the presence and hearing of other attendees. Written or electronic submissions may be accepted and included in the record. Rule-making hearings may be continued to a later time and place established on the record without publication of further notice under RCW 34.05.320.

As shown above the WSLCB violated RCW 34.05.370.

When the WSLCB violated RCW 34.05.370, RCW 34.05.325 and RCW 34.05.310, they violated RCW 34.05.375 as shown below:

RCW 34.05.375

Substantial compliance with procedures.

No rule proposed after July 1, 1989, is valid unless it is adopted in substantial compliance with RCW 34.05.310 through 34.05.395. Inadvertent failure to mail notice of a proposed rule adoption to any person as required by RCW 34.05.320(3) does not invalidate a rule. No action based upon this section may be maintained to contest the validity of any rule unless it is commenced within two years after the effective date of the rule.

[1988 c 288 § 314.]

As shown above, the rules developed for I-502 are invalid because the WSLCB was not in substantial compliance with RCW 34.05.310 through RCW 34.05.395.

Please repeal all of your I-502 rules and properly conduct rulemaking in substantial compliance with RCW 34.05.375.

Thank you

John Worthington
4500 SE 2ND PL
Renton WA.98059

From: karen.mccall@lcb.wa.gov
To: worthingtonjw2u@hotmail.com
Subject: RE: PETITION FOR ADOPTION AMENDMENT REPEAL
Date: Tue, 21 Apr 2015 18:48:15 +0000

John,

McCall, Karen J (LCB)

From: John worthington <worthingtonjw2u@hotmail.com>
Sent: Saturday, May 23, 2015 5:11 PM
To: McCall, Karen J (LCB)
Subject: FW: PRR #15-02-161

Please add this to the Petition for adoption amendment repeal.

Thank you.

John Worthington

From: bob.schroeter@lcb.wa.gov
To: worthingtonjw2u@hotmail.com
Subject: PRR #15-02-161
Date: Wed, 4-Mar 2015 01:29:56 +0000

Dear Mr. Worthington:

In response to your email received February 25, 2015, in which you made a new public records request as well as asked questions regarding the rulemaking file that you came to inspect on February 23, 2015, I respond as follows.

On February 19, 2015, you requested to review on February 23, 2015, the entire I-502 rulemaking file which is the rulemaking file for the Board's original adoption of chapter 314-55 WAC in 2013. Although I have not personally maintained the rulemaking file, my staff and I were pleased to accommodate the visit based upon your request made pursuant to RCW 34.05.370.

Prior draft versions of the rulemaking file, prior to adoption of the I-502 rules, no longer exist as rulemaking files are continuously updated until completed and finalized upon adoption of rules. This is the final rulemaking file for the Board's original adoption of chapter 314-55 WAC that you inspected.

In your email you also requested certain records from the Washington State Liquor Control Board (WSLCB) in your correspondence. This letter responds to your request under RCW 42.56.520 and WAC 314-60-085. Please use the above Request ID# when contacting us about this request.

You asked for the following records: "I would like electronic copies of the following documents:

1. 5547-5548
2. 6026-6084
3. 4552- attached Ezra Eickmeyer
4. 2361-attached Kretz letter
5. 5001-5193
6. 4720-4999
7. 6532-6724

In reviewing the above request please clarify if those are all page numbers that you reference as we need to clarify if the two "attached letters" that you refer to are after that page number indicated or something else. With the assumption that you are requesting the above page numbers solely, and they amount to approximately 700 pages in length.

McCall, Karen J (LCB)

From: John Worthington <worthingtonjw2u@hotmail.com>
Sent: Saturday, May 23, 2015 5:01 PM
To: McCall, Karen J (LCB)
Subject: FW: PETITION FOR ADOPTION AMENDMENT REPEAL
Attachments: EXHIBIT 7 PART 4.pdf

Exhibit 7 part 4

From: worthingtonjw2u@hotmail.com
To: karen.mccall@lcb.wa.gov
Subject: FW: PETITION FOR ADOPTION AMENDMENT REPEAL
Date: Sat, 23 May 2015 16:59:32 -0700

Exhibit 7 part 2

From: worthingtonjw2u@hotmail.com
To: karen.mccall@lcb.wa.gov
Subject: FW: PETITION FOR ADOPTION AMENDMENT REPEAL
Date: Sat, 23 May 2015 16:58:22 -0700

Resent Exhibit 7 part 1

From: worthingtonjw2u@hotmail.com
To: karen.mccall@lcb.wa.gov
Subject: FW: PETITION FOR ADOPTION AMENDMENT REPEAL
Date: Sat, 23 May 2015 16:57:12 -0700

Please add exhibit 7 to the petition for adoption, amendment, and repeal in support of the last communications with the board regarding specific violations of RCW 34.05

From: worthingtonjw2u@hotmail.com
To: karen.mccall@lcb.wa.gov
Subject: RE: PETITION FOR ADOPTION AMENDMENT REPEAL
Date: Tue, 19 May 2015 09:19:54 -0700

Please add this to the petition to amend adopt and repeal.

All of the following rules below are invalid because the WSLCB violated RCW 34.05.375, which covers the following:

RULE-MAKING PROCEDURES

- 34.05.310 Prenotice inquiry -- Negotiated and pilot rules.
- 34.05.312 Rules coordinator.
- 34.05.313 Feasibility studies -- Pilot projects.
- 34.05.314 Rules development agenda.
- 34.05.315 Rule-making docket.
- 34.05.320 Notice of proposed rule -- Contents -- Distribution by agency -- Institutions of higher education.
- 34.05.322 Scope of rule-making authority.
- 34.05.325 Public participation -- Concise explanatory statement.
- 34.05.328 Significant legislative rules, other selected rules.
- 34.05.330 Petition for adoption, amendment, repeal -- Agency action -- Appeal.
- 34.05.335 Withdrawal of proposal -- Time and manner of adoption.
- 34.05.340 Variance between proposed and final rule.
- 34.05.345 Failure to give twenty days notice of intended action -- Effect.
- 34.05.350 Emergency rules and amendments.
- 34.05.353 Expedited rule making.
- 34.05.360 Order adopting rule, contents.
- 34.05.362 Postadoption notice.
- 34.05.365 Incorporation by reference.
- 34.05.370 Rule-making file.
- 34.05.375 Substantial compliance with procedures.
- 34.05.380 Filing with code reviser -- Written record -- Effective dates.
- 34.05.385 Rules for rule making.
- 34.05.390 Style, format, and numbering -- Agency compliance.
- 34.05.395 Format and style of amendatory and new sections -- Failure to comply.

WAC Sections

- 314-55-005 What is the purpose of this chapter?
- 314-55-010 Definitions.
- 314-55-015 General information about marijuana licenses.
- 314-55-020 Marijuana license qualifications and application process.
- 314-55-035 What persons or entities have to qualify for a marijuana license?
- 314-55-040 What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license?
- 314-55-045 What marijuana law or rule violation history might prevent an applicant from receiving a marijuana license?
- 314-55-050 Reasons the board may seek denial, suspension, or cancellation of a marijuana license application or license.
- 314-55-070 Process if the board denies a marijuana license application.
- 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a

<u>314-55-077</u>	marijuana producer license?
<u>314-55-079</u>	What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license?
<u>314-55-081</u>	What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license?
<u>314-55-082</u>	Who can apply for a marijuana retailer license?
<u>314-55-083</u>	Insurance requirements.
<u>314-55-084</u>	What are the security requirements for a marijuana licensee?
<u>314-55-085</u>	Production of marijuana.
<u>314-55-086</u>	What are the transportation requirements for a marijuana licensee?
<u>314-55-087</u>	What are the mandatory signs a marijuana licensee must post on a licensed premises?
<u>314-55-089</u>	What are the recordkeeping requirements for marijuana licensees?
<u>314-55-092</u>	What are the tax and reporting requirements for marijuana licensees?
<u>314-55-095</u>	What if a marijuana licensee fails to report or pay, or reports or pays late?
<u>314-55-097</u>	Marijuana servings and transaction limitations.
<u>314-55-099</u>	Marijuana waste disposal—Liquids and solids.
<u>314-55-102</u>	Standardized scales.
<u>314-55-104</u>	Quality assurance testing.
<u>314-55-105</u>	Marijuana processor license extraction requirements.
<u>314-55-120</u>	Packaging and labeling requirements.
<u>314-55-125</u>	Ownership changes.
<u>314-55-130</u>	Change of location.
<u>314-55-135</u>	Change of business name.
<u>314-55-140</u>	Discontinue marijuana sales.
<u>314-55-145</u>	Death or incapacity of a marijuana licensee.
<u>314-55-147</u>	Are marijuana license fees refundable?
<u>314-55-150</u>	What hours may a marijuana retailer licensee conduct sales?
<u>314-55-155</u>	What are the forms of acceptable identification?
<u>314-55-160</u>	Advertising.
<u>314-55-165</u>	Objections to marijuana license applications.
<u>314-55-200</u>	Objections to marijuana license renewals.
<u>314-55-210</u>	How will the liquor control board identify marijuana, usable marijuana, and marijuana-infused products during checks of licensed businesses?
<u>314-55-220</u>	Will the liquor control board seize or confiscate marijuana, usable marijuana, and marijuana-infused products?
<u>314-55-230</u>	What is the process once the board summarily orders marijuana, usable marijuana, or marijuana-infused products of a marijuana licensee to be destroyed?
<u>314-55-505</u>	What are the procedures the liquor control board will use to destroy or donate marijuana, usable marijuana, and marijuana-infused products to law enforcement?
<u>314-55-506</u>	What are the procedures for notifying a licensee of an alleged violation of a liquor control board statute or regulation?
<u>314-55-507</u>	What is the process once the board summarily suspends a marijuana license?
<u>314-55-508</u>	How may a licensee challenge the summary suspension of his or her marijuana license?
<u>314-55-510</u>	Review of orders on stay.
<u>314-55-515</u>	What options does a licensee have once he/she receives a notice of an administrative violation?
<u>314-55-520</u>	What are the penalties if a marijuana license holder violates a marijuana law or rule?
<u>314-55-525</u>	Group 1 violations against public safety.
<u>314-55-530</u>	Group 2 regulatory violations.
<u>314-55-535</u>	Group 3 license violations.
<u>314-55-540</u>	Group 4 marijuana producer violations.
	Information about marijuana license suspensions.

After being caught holding 17 secret public meetings, and altering the rule making file, the WSLCB is in violation of RCW 34.05.315 as shown below

RCW 34.05.315

Rule-making docket.

(1) Each agency shall maintain a current public rule-making docket. The rule-making docket shall contain the information specified in subsection (3) of this section.

(2) The rule-making docket shall contain a listing of each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced by publication of a notice of proposed rule adoption under RCW 34.05.320 until the proposed rule is withdrawn under RCW 34.05.335 or is adopted by the agency.

(3) For each rule-making proceeding, the docket shall indicate all of the following:

(a) The name and address of agency personnel responsible for the proposed rule;

(b) The subject of the proposed rule;

(c) A citation to all notices relating to the proceeding that have been published in the state register under RCW 34.05.320;

(d) The place where written submissions about the proposed rule may be inspected;

(e) The time during which written submissions will be accepted;

(f) The current timetable established for the agency proceeding, including the time and place of any rule-making hearing, the date of the rule's adoption, filing, publication, and its effective date.

As shown above the WSLCB violated RCW 34.05.315 when they met in secret with law enforcement and treatment entities across the state.

When the WSLCB failed to place the 17 secret meeting minutes in the rule making file, then altered the rule making file from 13 boxes to 2, they violated RCW 34.05.370 as shown below:

Rule-making file.

(1) Each agency shall maintain an official rule-making file for each rule that it (a) proposes by publication in the state register, or (b) adopts. The file and materials incorporated by reference shall be available for public inspection.

(2) The agency rule-making file shall contain all of the following:

(a) A list of citations to all notices in the state register with respect to the rule or the proceeding upon which the rule is based;

(b) Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding on which the rule is based;

(c) All written petitions, requests, submissions, and comments received by the agency and all other written material regarded by the agency as important to adoption of the rule or the proceeding on which the rule is based;

(d) Any official transcript of oral presentations made in the proceeding on which the rule is based or, if not transcribed, any tape recording or stenographic record of them, and any memorandum prepared by a presiding official summarizing the contents of those presentations;

(e) All petitions for exceptions to, amendment of, or repeal or suspension of, the rule;

(f) Citations to data, factual information, studies, or reports on which the agency relies in the adoption of the rule, indicating where such data, factual information, studies, or reports are available for review by the public, but this subsection (2)(f) does not require the agency to include in the rule-making file any data, factual information, studies, or reports gathered pursuant to chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(g) The concise explanatory statement required by RCW 34.05.325(6); and

(h) Any other material placed in the file by the agency.

(3) Internal agency documents are exempt from inclusion in the rule-making file under subsection (2) of this section to the extent they constitute preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific document is not exempt from inclusion when it is publicly cited by an agency in connection with its decision.

(4) Upon judicial review, the file required by this section constitutes the official agency rule-making file with respect to that rule. Unless otherwise required by another provision of law, the official agency rule-making file need not be the exclusive basis for agency action on that rule. [1998 c 280 § 7; 1996 c 102 § 2; 1995 c 403 § 801; 1994 c 249 § 2; 1988 c 288 § 313.]

When the WSLCB held their 17 secret public meetings, the WSLCB violated RCW 34.05.325 which reads in relevant part:

RCW 34.05.325

Public participation — Concise explanatory statement.

(1) The agency shall make a good faith effort to insure that the information on the proposed rule published pursuant to RCW 34.05.320 accurately reflects the rule to be presented and considered at the oral hearing on the rule. Written comment about a proposed rule, including supporting data, shall be accepted by an agency if received no later than the time and date specified in the notice, or such later time and date established at the rule-making hearing.

(2) The agency shall provide an opportunity for oral comment to be received by the agency in a rule-making hearing.

(3) If the agency possesses equipment capable of receiving telefacsimile transmissions or recorded telephonic communications, the agency may provide in its notice of hearing filed under RCW 34.05.320 that interested parties may comment on proposed rules by these means. If the agency chooses to receive comments by these means, the notice of hearing shall provide instructions for making such comments, including, but not limited to, appropriate telephone numbers to be used; the date and time by which comments must be received; required methods to verify the receipt and authenticity of the comments; and any limitations on the number of pages for telefacsimile transmission comments and on the minutes of tape recorded comments. The agency shall accept comments received by these means for inclusion in the official record if the comments are made in accordance with the agency's instructions.

(4) The agency head, a member of the agency head, or a presiding officer designated by the agency head shall preside at the rule-making hearing. Rule-making hearings shall be open to the public. The agency shall cause a record to be made of the hearing by stenographic, mechanical, or electronic means. Regardless of whether the agency head has delegated rule-making authority, the presiding official shall prepare a memorandum for consideration by the agency head, summarizing the contents of the presentations made at the rule-making hearing, unless the agency head presided or was present at substantially all of the hearings. The summarizing memorandum is a public document and shall be made available to any person in accordance with chapter 42.56 RCW.

(5) Rule-making hearings are legislative in character and shall be reasonably conducted by the presiding official to afford interested persons the opportunity to present comment individually. All comments by all persons shall be made in the presence and hearing of other attendees. Written or electronic submissions may be accepted and included in the record. Rule-making hearings may be continued to a later time and place established on the record without publication of further notice under RCW 34.05.320.

As shown above the WSLCB violated RCW 34.05.370.

When the WSLCB violated RCW 34.05.370, RCW 34.05.325 and RCW 34.05.310, they violated RCW 34.05.375 as shown below:

RCW 34.05.375

Substantial compliance with procedures.

No rule proposed after July 1, 1989, is valid unless it is adopted in substantial compliance with RCW 34.05.310 through 34.05.395. Inadvertent failure to mail notice of a proposed rule adoption to any person as required by RCW 34.05.320(3) does not invalidate a rule. No action based upon this section may be maintained to contest the validity of any rule unless it is commenced within two years after the effective date of the rule. [1988 c 288 § 314.]

As shown above, the rules developed for I-502 are invalid because the WSLCB was not in substantial compliance with RCW 34.05.310 through RCW 34.05.395.

Please repeal all of your I-502 rules and properly conduct rulemaking in substantial compliance with RCW 34.05.375.

Thank you

John Worthington,
4500 SE 2ND PL
Renton WA.98059

From: karen.mccall@lcb.wa.gov
To: worthingtonjw2u@hotmail.com
Subject: RE: PETITION FOR ADOPTION AMENDMENT REPEAL
Date: Tue, 21 Apr 2015 18:48:15 +0000

John,

Thank you for your petition for rulemaking. The board has 60 days to decide if they will open rulemaking. I will get back to you with their decision prior to June 21, 2015.

Karen McCall
Rules coordinator
WSLCB
360-664-1631

From: john worthington [mailto:worthingtonjw2u@hotmail.com]
Sent: Sunday, April 19, 2015 6:36 PM
To: McCall, Karen J (LCB)
Subject: PETITION FOR ADOPTION AMENDMENT REPEAL

Please file this document with the appropriate person. A hard copy is on the way.

Thanks

John Worthington

McCall, Karen J (LCB)

From: john worthington <worthingtonjw2u@hotmail.com>
Sent: Saturday, May 23, 2015 5:04 PM
To: McCall, Karen J (LCB)
Subject: FW: I-502 RULE MAKING FILE TAMPERED WITH

Please add this document regarding the rule making file to my petition for adoption amendment repeal.
Thank you

John Worthington

Hello,

Please be advised that I have requested to view the I-502 rule making file and was told the entire rule making file did not exist and was updated after the last rule making was completed. There is no such thing as a "final" copy of the rule making file. There is only one rule making file and Judge Schaller has ruled this to be the case. The email communications is shown below.

From: bob.schroeter@lcb.wa.gov
To: worthingtonjw2u@hotmail.com
Subject: PRR #15-02-161
Date: Wed, 4 Mar 2015 01:29:56 +0000

Dear Mr. Worthington:

In response to your email received February 25, 2015, in which you made a new public records request as well as asked questions regarding the rulemaking file that you came to inspect on February 23, 2015, I respond as follows.

On February 19, 2015, you requested to review on February 23, 2015, the entire I-502 rulemaking file which is the rulemaking file for the Board's original adoption of chapter 314-55 WAC in 2013. Although I have not personally maintained the rulemaking file, my staff and I were pleased to accommodate the visit based upon your request made pursuant to RCW 34.05.370.

Prior draft versions of the rulemaking file, prior to adoption of the I-502 rules, no longer exist as rulemaking files are continuously updated until completed and finalized upon adoption of rules. This is the final rulemaking file for the Board's original adoption of chapter 314-55 WAC that you inspected.

In your email you also requested certain records from the Washington State Liquor Control Board (WSLCB) in your correspondence. This letter responds to your request under RCW 42.56.520 and WAC 314-60-085. Please use the above Request ID# when contacting us about this request.

Please investigate why documents were removed from the rule making file and prosecute under the following statutes, or I will have to proceed with a citizens criminal complaint.

40.16.010 Injury to public record.

40.16.020 Injury to and misappropriation of record.

Thank you

John Worthington

APPENDIX C

[Print](#)[Close](#)**PRR #15-02-161**

From: **Schroeter, Bob L (LCB)** (bob.schroeter@lcb.wa.gov)
Sent: Tue 3/03/15 5:29 PM
To: **worthingtonjw2u** (worthingtonjw2u@hotmail.com)

Dear Mr. Worthington:

In response to your email received February 25, 2015, in which you made a new public records request as well as asked questions regarding the rulemaking file that you came to inspect on February 23, 2015, I respond as follows.

On February 19, 2015, you requested to review on February 23, 2015, the entire I-502 rulemaking file which is the rulemaking file for the Board's original adoption of chapter 314-55 WAC in 2013. Although I have not personally maintained the rulemaking file, my staff and I were pleased to accommodate the visit based upon your request made pursuant to RCW 34.05.370.

Prior draft versions of the rulemaking file, prior to adoption of the I-502 rules, no longer exist as rulemaking files are continuously updated until completed and finalized upon adoption of rules. This is the final rulemaking file for the Board's original adoption of chapter 314-55 WAC that you inspected.

In your email you also requested certain records from the Washington State Liquor Control Board (WSLCB) in your correspondence. This letter responds to your request under RCW 42.56.520 and WAC 314-60-085. Please use the above Request ID# when contacting us about this request.

You asked for the following records: "I would like electronic copies of the following documents:

1. 5547-5548
2. 6026-6084
3. 4552- attached Ezra Eickmeyer
4. 2361-attached Kretz letter
5. 5001-5193
6. 4720-4999

☐ EXPEDITE
☒ No Hearing Set
☐ Hearing is Set:
Date:
Time:
The Honorable Judge Schaller

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

ARTHUR WEST,

Plaintiff,

v.

NO. 13-2-02227-1

DECLARATION OF KAREN
MCCALL

WASHINGTON STATE LIQUOR
CONTROL BOARD, SHARON
FOSTER, CHRIS MARR,
RUTHANNE KUROSE,

Defendants.

KAREN MCCALL HEREBY DECLARES:

1. I am over the age of eighteen and competent to be a witness. This declaration is based upon my personal knowledge. I am an employee of the Washington State Liquor Control Board ("Board"). I have been employed with the Board since 1988. I am currently the rules coordinator for the Board.
2. As the rules coordinator I am tasked with opening rulemaking after it is approved by the Board, creating initial drafts of rules for approval by the Board, preparing and filing notices and other documents related to rulemaking with the Code Reviser, notifying stakeholders, fielding questions from stakeholders, accepting comments on rulemakings, forwarding comments to the Board members and agency staff, working

DECLARATION OF KAREN MCCALL

- 1 with stakeholders and working on chapter revisions of the Washington Administrative
2 Code.
- 3 3. My position is not managerial or supervisory. I do not supervise any staff or have
4 authority to make decisions regarding obtaining legal advice, using legal advice or
5 decisions regarding litigation.
- 6 4. My position carries no authority to make any determinations with regard to what the
7 rulemaking file will consist of beyond the statutory requirements. My position is to
8 "coordinate" the rulemaking efforts by gathering information and enacting the
9 decisions the Board makes with regard to rulemaking.
- 10 5. In the instances of the I-502 rulemaking file, I was in charge of collecting the
11 documents.
- 12 6. I am not the only individual in the agency who can collect documents and maintain a
13 rulemaking file. For example, Ingrid Mungia, hired to assist with coordinating
14 rulemaking to implement I-502, maintained the SEPA file related to the I-502
15 rulemaking. The individual who maintains a rulemaking file is essentially a record
16 keeper as it is most efficient to have a single person charged with collecting and
17 maintaining the documents, particularly the stakeholder comments.
- 18 7. Included in the rulemaking file were meeting notes made by individual staff, including
19 myself, comments made by stakeholders at the rulemaking hearings, e-mails of
20 notifications of rulemaking, copies of proposed rules, documentation of the Board
21 members approval process, issue pages and stakeholder comments. Everything, with
22 the exception of the stakeholder comments, were available to the public online.
- 23 8. The I-502 rulemaking file consisted of several thousand documents that filled two
24 document boxes. The stakeholder comments, in particular, were numerous and
25 maintaining and organizing them was an overwhelming process. Many of the
26

DECLARATION OF KAREN MCCALL

- 1 stakeholder comments were received by email, and were printed and placed in the file.
2 Many of the comments were also mailed directly to the Board members, to me, or to
3 other agency staff. All agency staff are instructed to forward any comments on
4 rulemakings that they receive to me for collection and dissemination to the Board
5 members.
- 6 9. When collecting documents forwarded to me by the Board members or agency staff, I
7 do not check for duplicates, but place all of them in the working version of the file until
8 the rulemaking is concluded. Once rulemaking is concluded I create the final
9 rulemaking file and remove duplicates as well as other documents that don't belong in
10 the rulemaking file because they don't pertain to the rulemaking. For example, I might
11 find comments that belong in a different rulemaking file or completely irrelevant
12 materials that were accidentally appended to relevant material. This is also the time
13 when I would try to put stakeholder comments in chronological order.
- 14 10. I did not intentionally place attorney-client privileged documents in the working
15 version of the rulemaking file as I am aware that they are privileged and do not belong
16 in the file. Had I known the privileged documents had been in the file I would have
17 removed them just as I would if I found any other documents that I knew did not
18 belong in the rulemaking file.
- 19 11. If there were ever any doubt in my mind as to whether something belonged in the file I
20 would have scheduled time to attend the executive management team meeting to allow
21 the Board to make the final determination because I do not have the authority to make
22 that kind of decision.

23
24 I declare under penalty of perjury under the laws of the state of
25 Washington that the foregoing is true and correct.
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Signed this 24th day of July, 2014, at Olympia, Washington.

KAREN MCCALL
Rulemaking Coordinator for the Washington
State Liquor Control Board

Karen McCall

DECLARATION OF KAREN MCCALL

1 ☐ EXPEDITE
2 ☐ No Hearing Set
2 ☒ Hearing is Set
3 Date: April 1, 2015
3 Time: 9:00 a.m.
4 Honorable Anne Hirsch

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8 STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

9 JOHN WORTHINGTON,

10 Plaintiff,

11 v.

12 WASHINGTON STATE LIQUOR
13 CONTROL BOARD, WASHINGTON
STATE,

14 Defendants.

NO. 15-2-01107-1
NO. 15-2-02422-34

DECLARATION OF
KAREN MCCALL IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

15 I, Karen McCall, declare the following to be true and correct under penalty of perjury
16 under the laws of the United States and Washington:

- 17 1. I am over the age of eighteen and competent to be a witness.
18 2. This declaration is based upon my personal knowledge.
19 3. I am employed as the Rules Coordinator and Senior Policy Analyst for the
20 Washington State Liquor and Cannabis Board ("Board"). I have been employed with the
21 Board since 1988. My current position is within the Director's Office. I have been in this
22 position since August 1, 2008. My responsibilities include the following: drafting rules for
23 the Board to implement legislation or to clarify and revise current rules; maintaining the
24 Board's official rulemaking file for each rulemaking the Board proposes by publication in the
25 state register or adopts, under RCW 34.05.370(1)-(2); providing policy analysis to the Board,
26

DECLARATION OF
KAREN MCCALL IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

1

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7876

1 Agency Director, and Deputy Director as requested; and assisting the Agency Director
2 regarding development and implementation of public policy.

3 4. Since August 1, 2008, I have kept the Board's rulemaking files in a file cabinet
4 in the Director's office. The files are kept in hard copy, paper format. I create a new file each
5 time the Board commences a rulemaking process, such as by filing a preproposal statement of
6 inquiry (CR-101) or an emergency rulemaking order (CR-103E), in the Washington State
7 Register. I then keep all materials related to that rulemaking process in that file.

8 5. On February 19, 2015, I received an email from John Worthington, who is now
9 the Plaintiff in this case. Mr. Worthington had sent the email to me after business hours on
10 February 18, 2015. A true and correct copy of that email appears in an email chain that is
11 attached to this declaration as Exhibit 1.

12 6. I immediately forwarded Mr. Worthington's email (Exhibit 1) to Bob
13 Schroeter, who at that time was the Board's Public Records Compliance Manager, for
14 response to the email.

15 7. On or before February 23, 2015, I provided the Board's public records unit
16 with the Board's official rulemaking file for the Board's initial adoption of rules to implement
17 Initiative 502 (I-502). See Wash. St. Reg. 13-21-104 (filed Oct. 21, 2013; effective Nov. 21,
18 2013) (adopting permanent rules in "the first rule making to implement I-502"). My
19 understanding is that the Board's public records unit made this file available for Mr.
20 Worthington to review in person on February 23, 2015, though I did not personally participate
21 in Mr. Worthington's visit.

22 8. On or about February 25, 2015, Mr. Schroeter informed me that Mr.
23 Worthington had made a public records request for "the entire rule making file for I-502 rule
24 making." Mr. Schroeter asked me to provide the Board's public records unit with the relevant
25 rulemaking files so that it could provide a response to Mr. Worthington.

26

DECLARATION OF
KAREN MCCALL IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

9. The Board's public records unit already had the official rulemaking file for the Board's initial adoption of rules to implement I-502, as described above. Shortly after receiving Mr. Schroeter's request, I provided the public records unit with all rulemaking files for rulemaking that the Board had engaged in pursuant to I-502 subsequent to its initial rulemaking process.

10. When the public records unit asks me to provide rulemaking files in response to records requests, my usual practice is to provide the records to the public records unit on the same day or shortly thereafter. I have no reason to believe that I varied from my usual practice in this case.

11. In summary, in late February to early March 2015, I provided the Board's public records unit with all of the Board's official rulemaking files for its rulemaking under I-502 including: the entirety of the initial I-502 rulemaking file, as had been previously prepared and finalized for filing with the Court in a rule challenge brought by an individual named Arthur West; and all rulemaking files for rulemaking that the Board had engaged in pursuant to I-502 subsequent to its initial rulemaking process.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

SIGNED at Olympia, Thurston County, Washington this 15 day of March, 2016.

Karen McCall
KAREN MCCALL

1 ☐ EXPEDITE
2 ☐ No Hearing Set
3 ☒ Hearing is Set
4 Date: April 1, 2015
5 Time: 9:00 a.m.
6 Honorable Anne Hirsch
7

8 STATE OF WASHINGTON
9 THURSTON COUNTY SUPERIOR COURT

10 JOHN WORTHINGTON,
11 Plaintiff,
12 v.
13 WASHINGTON STATE LIQUOR
14 CONTROL BOARD, WASHINGTON
15 STATE,
16 Defendants.

NO. 15-2-01107-1
NO. 15-2-02422-34

DECLARATION OF
ROBERT L. SCHROETER IN
SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

17 I, Robert L. Schroeter, declare the following to be true and correct under penalty of
18 perjury under the laws of the United States and Washington:

- 19 1. I am over the age of eighteen and competent to be a witness.
20 2. This declaration is based upon my personal knowledge.
21 3. I am employed as the Director of Operational Support for the Washington State
22 Liquor and Cannabis Board ("Board"). My responsibilities include the following: public
23 records management on behalf of the Board, discovery management for all litigation on behalf
24 of the Board, agency contracts and procurement, the marijuana examiners program and risk
25 management. As part of my responsibilities, I have overseen all public records staff
26 employed by the Board and their handling of requests for the Board since October 1, 2014.

DECLARATION OF
ROBERT L. SCHROETER IN SUPPORT
OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

1 4. When the Board receives public records requests, the request is assigned to a
2 public records staff member who then enters the request into the Board's public records
3 request agency tracking system. The staff member assigns the request a public records request
4 tracking number, which consists of "year"-"month"-"sequential number." The staff member
5 creates an electronic folder on our public records requests drive for each request, and stores
6 communications, records gathered, records produced, and other information about the request
7 into this electronic folder.

8 5. When the Board provides records to a requestor electronically, it does so by
9 either sending the requestor a compact disc; emailing the records as an attachment; or
10 uploading the records to Box.com, a secure online website that allows requestors to download
11 and review records for a period of time. When the records are provided via a link to a
12 Box.com folder, we send the requestor an email that includes the link to the folder, and
13 informs the requestor how long the link will be available, normally for 30 days. The vast
14 majority of public records requests received by the Board during my tenure are responded to
15 using either the Box.com FTP (file transfer protocol) process or as an attachment to a
16 response email if the files are not too large to send in that manner.

17 6. During 2015, the Board's public records unit received an average of 202 record
18 requests each month. For the first half of 2015, the Board employed 3 fulltime records staff
19 persons.

20 7. For the first 2 months of 2016, the Board has averaged over 300 public record
21 requests per month, and now has 5 fulltime public records staff persons.

22 **A. Background Information on I-502 and Initial I-502 Rulemaking**

23 8. Washington voters approved Initiative Measure 502 (I-502) in November
24 2012. Laws of 2013, ch. 3. I-502 directed the Board to establish a system for issuing licenses
25 to producers, processors, and retailers of marijuana for recreational use. Laws of 2013, ch. 3;
26


1 RCW 69.50.325–369. I-502 was codified as part of chapter 69.50 RCW. *Id.*; *see also* RCW
2 69.50.325–369.

3 9. In December 2012, the Board filed a preproposal statement of inquiry for a new
4 chapter in title 314 of the Washington Administrative Code (WAC), the purpose of which was to
5 implement I-502. Wash. St. Reg. 12-24-090 (filed Dec. 5, 2012). This was the first rulemaking
6 process to begin the Board's implementation of I-502, and will be referenced in this declaration
7 as "the initial I-502 rulemaking process." *Id.* The Board filed the first version of the initial I-
8 502 rules with the Office of the Code Reviser on July 3, 2013. WSR 13-14-124.

9 10. The Board completed the initial I-502 rulemaking process in October 2013. The
10 resulting rules were adopted as chapter 314-55 WAC. WAC 314-55-005; Wash. St. Reg. 13-21-
11 104 (filed Oct. 21, 2013; effective Nov. 21, 2013).

12 11. In the midst of the initial I-502 rulemaking process, in July 2013, an individual
13 named Arthur West submitted a public record request for a copy of the rulemaking file. The
14 Board's response to Mr. West's request included an incomplete version of the rulemaking file
15 for the initial I-502 rulemaking process, as rulemaking was still in progress. Later that year,
16 in October 2013, before the final adoption of the first set of rules the Board adopted to
17 implement I-502, Mr. West made a second request for the file, and was sent the file in the
18 form it existed at that point in time. That file was not yet organized for certification as a
19 record for court review, contained duplicate copies of many materials, as well as internal
20 drafts that are not required to be part of the rulemaking file, under RCW 34.05. 370(3).

21 12. In 2014, while the Board was involved in a lawsuit filed by Mr. West, the
22 Board prepared for filing as a certified record a final rulemaking file of the initial I-502
23 rulemaking process. This rulemaking file consisted of 6,924 pages.

24 
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1 **B. Mr. Worthington's Public Records Request (PRR) #15-02-170**

2 13. I have searched and reviewed the Board's records for documents relating to
3 public records requests made by plaintiff John Worthington in February 2015 for portions of
4 and the entire I-502 rulemaking file.

5 14. On February 19, 2015, the Board's rulemaking coordinator, Karen McCall,
6 received an email from Mr. Worthington asking "to make a time with the WSLCB to review
7 the I-502 rule making file." I received a similar request from another individual named
8 Elizabeth Hallock. I then contacted both Worthington and Hallock to arrange a time for them
9 to review the requested file at the Board's headquarters in Olympia. A true and correct copy
10 of my email to Mr. Worthington and Ms. Hallock appears in an email chain that is attached to
11 this declaration as Exhibit 1.

12 15. Mr. Worthington appeared in person at the Board's headquarters on February
13 23, 2015, to review the I-502 rulemaking file. At the conclusion of the visit, at the request of
14 Mr. Worthington, I provided him with the agency's public record request form.

15 16. On February 24, 2015, Mr. Worthington made a public records request for
16 selected pages contained in the initial I-502 rulemaking file that he had examined by
17 arrangement at the Board's headquarters on February 23, 2015. Mr. Worthington made his
18 request by email after business hours on February 24, 2015, which resulted in the request
19 being noted as received on February 25, 2015. This request was assigned an internal tracking
20 number of PRR (Public Record Request) #15-02-161.

21 17. On February 26, 2015, Mr. Worthington made a public records request for "the
22 entire rule making file for I-502 rule making in an electronic format." Mr. Worthington made
23 his request by email. This request was assigned an internal tracking number of PRR
24 #15-02-170.

25 18. On March 3, 2015, I responded within the 5-day period prescribed by law to
26 Mr. Worthington's request on PRR #15-02-161 by email. In the 5-day letter that I emailed to

1 Mr. Worthington, I acknowledged receipt of the request and provided an estimated timeframe
2 for completion of March 31, 2015. A true and correct copy of my March 3, 2015, response,
3 along with a chain of email correspondence that includes Mr. Worthington's request PRR
4 #15-02-161, is attached to this declaration as Exhibit 2.

5 19. On March 5, 2015, I responded within the 5-day period prescribed by law to
6 Mr. Worthington's request on PRR #15-02-170 by email. In the 5-day letter that I emailed to
7 Mr. Worthington, I acknowledged receipt of the request, provided an estimated timeframe for
8 completion of May 7, 2015, and noted that his request had overlapping requests with PRR
9 #15-02-161. A true and correct copy of my March 5, 2015, response, along with a chain of
10 email correspondence that includes Mr. Worthington's request PRR #15-02-170, is attached to
11 this declaration as Exhibit 3.

12 20. Mr. Worthington did not respond that the estimated timeframe was
13 unreasonable. On March 5, 2015, Mr. Worthington responded to my March 5, 2015, email by
14 stating, "[j]ust go with the latter encompassing request not the request below. PRR # of 15-02-
15 161." Based upon that email, I closed the request under PRR #15-02-161 as withdrawn. A
16 true and correct copy of Mr. Worthington's March 5, 2015, email is attached to this
17 declaration as Exhibit 4.

18 21. Because Mr. Worthington requested the "entire rule making file for I-502
19 rulemaking," I asked the Board's rulemaking coordinator, Karen McCall, to provide the
20 relevant records to the records unit for review and response. Ms. McCall provided me with
21 the entirety of the initial I-502 rulemaking file, as had been previously prepared and finalized.
22 She also provided supplemental documents for additional rulemaking that the Board had
23 engaged in pursuant to I-502.

24 22. As Mr. Worthington had requested that the records be sent to him "in an
25 electronic format," during the month of March 2015, Board Public Records staff scanned the
26

1 entirety of the initial I-502 rulemaking file. During the month of April, 2015, Board Public
2 Records staff scanned the entirety of the supplementary I-502 rulemaking files.

3 23. Due to the large size of those records, emailing those records to Mr.
4 Worthington and similar requestors is not a viable option. As we had previously and
5 subsequent to the request at issue with Mr. Worthington and with other requestors, we
6 transferred the requested records to an external storage folder via box.com where requestors
7 could retrieve the records through a link sent by email. Using those links all files placed in
8 the external storage site could be downloaded directly by the requestor.

9 24. On April 8, 2015, the Board received another email from Mr. Worthington
10 again requesting to see the same I-502 rulemaking files as he had requested in the pending
11 request. He sent this email as a reply to another pending public record request to the Board on
12 another subject matter (assigned PRR #15-03-180). Board public records staff member Missy
13 Norton responded to that request and indicated that it was already covered by his pending
14 request under PRR #15-02-170. In addition, Ms. Norton was able to provide to Mr.
15 Worthington an installment of records in response to PRR #15-02-170 and emailed him a
16 box.com link, which included the complete initial I-502 rulemaking file records. A true and
17 correct copy of Ms. Norton's response, along with a chain of email correspondence that
18 includes Mr. Worthington's duplicative request for the I-502 rulemaking file, is attached to
19 this declaration as Exhibit 5.

20 25. On May 7, 2015, I provided Mr. Worthington with an additional response to
21 PRR #15-02-170, to complete the Board's response to that request. In my email, I included a
22 link to another box.com folder that contained both the initial I-502 rulemaking file and the
23 supplementary I-502 rulemaking files. In responding completely to Mr. Worthington's
24 request by the estimated date of completion, we provided the records that comprised the final
25 rulemaking files for the I-502 rulemaking process. As noted further herein, Mr. Worthington
26

1 was given opportunities to clarify and identify additional records, but did not take advantage
2 of those opportunities at any point.

3 26. In the May 7, 2015, email to Mr. Worthington via the box.com link, the
4 following files were included: Those files titled "I-502 Initial Rulemaking File" had the
5 content below (the number at the end of the lines are page number ranges):
6

7 IndexOfCertifiedRecordFINAL
8 Initial I502 Rulemaking File #01_1-624
9 Initial I502 Rulemaking File #02_625-707
10 Initial I502 Rulemaking File #03_708-977
11 Initial I502 Rulemaking File #04_978-1000
12 Initial I502 Rulemaking File #05_1001-2942_CommentsOnCR101
13 Initial I502 Rulemaking File #06_2943-4423_CommentsOnInitialDraftProposedRules
14 Initial I502 Rulemaking File #07_4424-5397
15 Initial I502 Rulemaking File #08_5398-6025
16 Initial I502 Rulemaking File #09_6026-6632
17 Initial I502 Rulemaking File #10_6633-6724
18 Initial I502 Rulemaking File #11_6725-6924

19 The other file of scanned supplementary I-502 rulemaking file records was entitled "Rule
20 Making" which had the content below:

21 14-40 Emergency rules
22 314-55-050 Status Sheet
23 1000 Foot Buffer
24 2014 ESHB 2304
25 Additional Rules for 502
26 ER 15-02 Rules
Revisions Marijuana Rules

27. A true and correct copy of my May 7, 2015, email to Mr. Worthington, along
with a chain of email correspondence that includes earlier correspondence with Mr.
Worthington regarding PRR #15-02-170, is attached to this declaration as Exhibit 6.

1 28. Over the past 18 months, the Board has responded to 30 separate public record
2 requests submitted by Mr. Worthington, and has completed its responses and we have closed
3 all of those 30 requests. Over 80,244 pages of documentary records have been provided to Mr.
4 Worthington in responding to these requests, and no charges have been assessed against the
5 plaintiff in providing responsive records.

6 29. As to the 30 public record requests submitted by Mr. Worthington and
7 completed by the Board over the past 18 months, there has been no claim in communications
8 made by Mr. Worthington to the Board that responsive records were not provided. Indeed, in
9 completing the request for the rulemaking file that is at issue here, PRR #15-02-170, I
10 specifically noted in the correspondence to Mr. Worthington that "if there are other records
11 which you believe should be in this link that are responsive to your request, please feel free to
12 contact me so that I can assist you directly." Mr. Worthington did not at any time respond to
13 my email by identifying other records that he believed should have been included in the link.

14 **C. Elizabeth Hallock's Request, PRR #15-03-105**

15 30. On March 17, 2015, an individual named Elizabeth Hallock submitted a public
16 records request to the Board that stated, in relevant part: "I am making a formal public records
17 act request in accordance with RCW 42.56 to view the complete rulemaking file associated
18 with the LCB's rules regarding Initiative 502, specifically WAC 314-55-005 through and
19 including 314-55-540, including any and all emergency rules that have ever been adopted
20 regarding Initiative 502." Ms. Hallock also stated, "In addition, please send to me any
21 correspondence and records, including metadata, regarding the 'working' rule-making file."
22 This request was assigned an internal tracking number of PRR #15-03-105. Ms. Hallock made
23 several subsequent clarifications to her request.

24 31. The Board provided its final response to Ms. Hallock on May 11, 2015. A true
25 and correct copy of Ms. Hallock's email request PRR #15-03-105 appears in an email chain
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6
7 SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF THURSTON
8

9 JOHN WORTHINGTON,

NO. 15-2-00069-9

10 Plaintiff,

11 v.

12 WASHINGTON STATE LIQUOR
13 CONTROL BOARD, WASHINGTON
14 STATE,

15 Defendants,
16

PLAINTIFF'S 4th SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
TO SHARON FOSTER AND ANSWERS
AND OBJECTIONS THERETO

17 TO: WASHINGTON STATE ATTORNEY GENERAL'S OFFICE, WSLCB
18 AND TO: SHARON FOSTER
19

20 **I. INTERROGATORIES**

21 Pursuant to Civil Rules 26 and 33, Plaintiff submits the following interrogatories to be
22 answered in writing, under oath within thirty (30) days of service. These interrogatories are
23 intended to be continuing in nature so as to require supplemental information under Civil Rule
26(e).

24 **II. REQUEST FOR PRODUCTION OF DOCUMENTS**

25 Pursuant to Civil Rules 26 and 34, you are requested to produce, at a mutually agreeable
26 place, all documents designated below that are in your possession, custody, or control of your

1 Interrogatories Nos. 1-16 were part of the rulemaking process, but were a means for the Board to
2 share information about its proposed time schedule for implementation of I-502, and to obtain
3 information about the issues that others might see for how I-502 might impact the state.

4 INTERROGATORY NO.25: Who instructed the Board that it could remove documents from the
5 rule making file to create a "final" or "Working" copy of the rule making file?

6 Answer: I am not aware of any instructions about the contents of any rulemaking file. I did not
7 ever directly access the rulemaking file. When there were documents for the Board to review for
8 a meeting or the Board asked to see specific documents from the rulemaking file, the Rules
9 Coordinator would make or send us copies of comments that were received or any other type of
10 document the Board was to review and gave the Board members copies of what was in the file.
11 The Rulemaking Coordinator shared comments that were received with the Board members for
12 our consideration in the rulemaking process. I did not know anything about a final or working
13 copy of the I-502 rulemaking file, nor engage in any discussions about this issue.

14 INTERROGATORY NO.26: Who removed files from the rule making file in order to create a
15 "final" or "working" copy of the I-502 rule making file?

16 Answer: I do not know who may have removed files nor do I know that any files were removed
17 from the I-502 rulemaking file at any time.

18 INTERROGATORY NO.27: What is the name of the I-502 rule making file custodian?

19 Answer: Karen McCall.

20 INTERROGATORY NO.28: How many I-502 rule making comments were sent to you directly?

21 Answer: I have no recollection of receiving rulemaking comments sent only to me and not to the
22 Board's rulemaking coordinator, but the Board's Confidential Secretary often screened our mail
23 and email and forwarded any rulemaking comments to Karen McCall, rather than me reading a
24 comment received by mail or email and personally forwarding the documents. We set up this
25 process to avoid inadvertent ex parte contact in contested adjudicative matters, as licensees and
26 applicants often attempt to contact the Board members directly with a concern, and we are
screened from discussion of contested matters until they come before the Board for consideration
of a final order.

INTERROGATORY NO.29: Did you publically announce the comments you received and have
them placed in the rule making file?

ANSWER: As noted above, I have no idea if any rulemaking comments came to me directly,
and if they had, I would have forwarded them to the rulemaking coordinator for inclusion in the
rulemaking file, and for distribution to the other Board members. I am not aware of any forum in
which I would have "publicly announced" any comments I received.

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Responsive documents will be provided and will be supplemented as any additional documents are located.

Sharon Foster being first duly sworn, on oath deposes and says that she is the former Chair of the Washington State Liquor Control Board and that she has read the within and foregoing responses, knows the contents thereof, and believes the same to be true.

SUBSCRIBED AND SWORN to before me this 26 day of June, 2015.



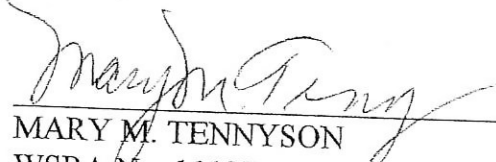
NOTARY PUBLIC in and for the State of
Washington, residing at THURSTON COUNTY
My appointment expires 10/24/18
Print Name NANCY J. HAWKINS

CERTIFICATION

The undersigned attorney for Defendant has read the foregoing answers to requests for production and certifies that they are in compliance with CR26 (g).

ANSWERS and RESPONSES dated this 26th day of June, 2015.

ROBERT M. FERGUSON
Attorney General


MARY M. TENNYSON
WSBA No. 11197

Sr. Assistant Attorney General
JEREMY GELMS, WSBA# 45646
Assistant Attorney General
Attorneys for Defendants

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7 SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF THURSTON

8
9 JOHN WORTHINGTON,

10 Plaintiff,

11 v.

12 WASHINGTON STATE LIQUOR
13 CONTROL BOARD, WASHINGTON
14 STATE,

15 Defendants,
16

NO. 15-2-00069-9

PLAINTIFF'S 4th SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
TO CHRIS MARR AND ANSWERS
AND OBJECTIONS THERETO

17 TO: WASHINGTON STATE ATTORNEY GENERAL'S OFFICE, WSLCB
18 AND TO: CHRIS MARR
19

20 **I. INTERROGATORIES**

21 Pursuant to Civil Rules 26 and 33, Plaintiff submits the following interrogatories to be
22 answered in writing, under oath within thirty (30) days of service. These interrogatories are
23 intended to be continuing in nature so as to require supplemental information under Civil Rule
26(e).

24 **II. REQUEST FOR PRODUCTION OF DOCUMENTS**

25 Pursuant to Civil Rules 26 and 34, you are requested to produce, at a mutually agreeable
26 place, all documents designated below that are in your possession, custody, or control of your

1 INTERROGATORY NO.24: If the answer to interrogatory 23 is no, why didn't the Board place
2 the meeting minutes and notes from the meetings with law enforcement and treatment
professionals on the dates above, in the rule making file?

3 Answer: As a Board member I was not involved storing documents in the rulemaking file or the
4 maintenance of the rulemaking file. I did not understand that the meetings referenced in
5 Interrogatories Nos. 1-16 were part of the rulemaking process, but were a means for the Board to
share information about its proposed time schedule for implementation of I-502, and to obtain
information about the issues that others might see for how I-502 might impact the state.

6 INTERROGATORY NO.25: Who instructed the Board that it could remove documents from the
7 rule making file to create a "final" or "Working" copy of the rule making file?

8 Answer: I did not ever directly access the rulemaking file. When there were documents for the
9 Board to review for a meeting or the Board asked to see specific documents from the rulemaking
10 file, the Rules Coordinator would make or send us copies of comments that were received or any
11 other type of document the Board was to review and gave the Board members copies of what
12 was in the file. The Rulemaking Coordinator shared comments that were received with the
Board members for our consideration in the rulemaking process. I did not know anything about
a final or working copy of the I-502 rulemaking file, nor engaged in any discussions about this
issue.

13 INTERROGATORY NO.26: Who removed files from the rule making file in order to create a
14 "final" or "working" copy of the I-502 rule making file?

15 Answer: I do not know who may have removed files or if files were removed from the I-502
16 rulemaking file.

17 INTERROGATORY NO.27: What is the name of the I-502 rule making file custodian?

18 Answer: I have assumed the rules coordinator, Karen McCall, was the custodian of the I-502
19 rulemaking file.

20 VI. REQUESTS FOR PRODUCTION

21 REQUEST FOR PRODUCTION NO.1: Please identify, produce, or make available for
22 inspection all records, all records related to, responsive to or used in answering Interrogatory
No.1-27.

23 Responsive documents will be provided. Where possible, we will refer to documents previously
24 produced by Production number, and will not provide new copies of those documents. As
25 additional documents are identified and processed, we will update the responses.
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3 VERIFICATION

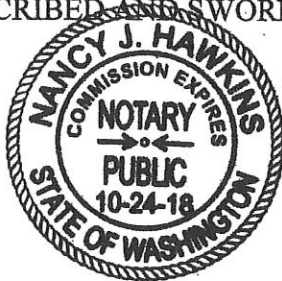
4 STATE OF WASHINGTON)
5) ss.
6 COUNTY OF THURSTON)

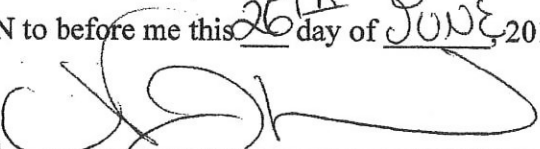
7 Chris Marr being first duly sworn, on oath deposes and says that he is a former
8 member of the Washington State Liquor Control Board and that he has read the within and
9 foregoing responses to the Interrogatories, knows the contents thereof, and believes the same
10 to be true.

11 SIGNATURE: 

Chris Marr

12 SUBSCRIBED AND SWORN to before me this 26th day of JUNE, 2015.



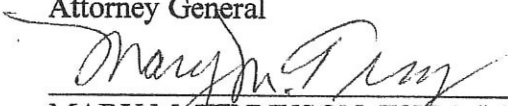

18 NOTARY PUBLIC in and for the State of
19 Washington, residing at THURSTON COUNTY
20 My appointment expires 10/24/18
21 Print Name NANCY J. HAWKINS

22 CERTIFICATION

23 The undersigned attorney for Defendant has read the foregoing answers to requests
24 for production and certifies that they are in compliance with CR26 (g).

25 ANSWERS and RESPONSES dated this 26th day of June, 2015.

26 ROBERT M. FERGUSON
Attorney General


MARY M. TENNYSON, WSBA # 11197
Sr. Assistant Attorney General
Attorneys for Defendants

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7 SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF THURSTON

8
9 JOHN WORTHINGTON,

10 Plaintiff,

11 v.

12 WASHINGTON STATE LIQUOR
13 CONTROL BOARD, WASHINGTON
14 STATE,

15 Defendants,

NO. 15-2-00069-9

PLAINTIFF'S 4th SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
TO RUTHANN KUROSE AND
ANSWERS AND OBJECTIONS
THERE TO

16
17 TO: WASHINGTON STATE ATTORNEY GENERAL'S OFFICE, WSLCB
18 AND TO: RUTHANN KUROSE
19

20 **I. INTERROGATORIES**

21 Pursuant to Civil Rules 26 and 33, Plaintiff submits the following interrogatories to be
22 answered in writing, under oath within thirty (30) days of service. These interrogatories are
23 intended to be continuing in nature so as to require supplemental information under Civil Rule
26(e).

24 **II. REQUEST FOR PRODUCTION OF DOCUMENTS**

25 Pursuant to Civil Rules 26 and 34, you are requested to produce, at a mutually agreeable
26 place, all documents designated below that are in your possession, custody, or control of your

1 INTERROGATORY NO.25: Who instructed the Board that it could remove documents from the
2 rule making file to create a "final" or "Working" copy of the rule making file?

3 Answer: I am not aware of any instructions about the contents of any rulemaking file. I did not
4 ever directly access the rulemaking file. When there were documents for the Board to review for
5 a meeting or the Board asked to see specific documents from the rulemaking file, the Rules
6 Coordinator would make or send us copies of comments that were received or any other type of
7 document the Board was to review and gave the Board members copies of what was in the file.
The Rulemaking Coordinator shared comments that were received with the Board members for
our consideration in the rulemaking process. I did not know anything about a final or working
copy of the I-502 rulemaking file, nor engage in any discussions about this issue.

8 INTERROGATORY NO.26: Who removed files from the rule making file in order to create a
9 "final" or "working" copy of the I-502 rule making file?

10 Answer: I do not know who may have removed files nor do I know that any files were removed
11 from the I-502 rulemaking file at any time.

12 INTERROGATORY NO.27: What is the name of the I-502 rule making file custodian?

13 Answer: I believe that the WSLCB rules coordinator, Karen McCall, was the custodian of the I-
14 502 rulemaking file.

15 INTERROGATORY NO.28: How many I-502 rule making comments were sent to you directly?

16 Answer: I have no recollection of receiving rulemaking comments sent only to me and not to the
17 Board's rulemaking coordinator, but if I did receive any, I would have forwarded any rulemaking
18 comments to Karen McCall, or asked our Confidential Secretary to forward them, rather than me
19 reading a comment received by mail or email and personally forwarding the documents.

20 INTERROGATORY NO.29: Did you publically announce the comments you received and have
21 them placed in the rule making file?

22 ANSWER: As noted above, I have no idea if any rulemaking comments came to me directly,
23 and if they had, I would have forwarded them to the rulemaking coordinator for inclusion in the
24 rulemaking file, and for distribution to the other Board members. I am not aware of any forum in
25 which I would have "publicly announced" any comments I received.

26 VI. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO.1: Please identify, produce, or make available for
inspection all records, all records related to, responsive to or used in answering Interrogatory
No.1-27.

1 Responsive documents will be provided and will be supplemented as any additional documents
2 are located.

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5 VERIFICATION

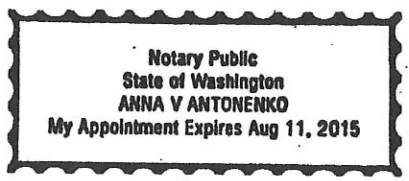
6 STATE OF WASHINGTON)
7) ss.
8 COUNTY OF THURSTON)

9 Ruthann Kurose being first duly sworn, on oath deposes and says that she is a
10 member of the Washington State Liquor Control Board and that she has read the within and
11 foregoing responses, knows the contents thereof, and believes the same to be true.

12 SIGNATURE: Ruthann Kurose
13 Ruthann Kurose

14 SUBSCRIBED AND SWORN to before me this 29th day of June, 2015.

15 Anna V. Antonenko
16 NOTARY PUBLIC in and for the State of
17 Washington, residing at MERICE 151670
18 My appointment expires Aug. 11 2015
19 Print Name ANNA V. ANTONENKO



APPENDIX D

PETITION FOR JUDICIAL REVIEW

1 recipients. Worthington was not afforded the same privileged and private opportunity to rebut
2 any of their comments and he was not given a privileged process to get his information and
3 comments. State agency actions are also subject to due process requirements under the U.S. and
4 Washington State Constitutions. See Mathews v. Eldridge, 424 U.S. 319, 334-35, 96 S. Ct. 893,
5 47 L.Ed. 2d 18 (1976).

6
7 8.7 Despite the clear terms of the statutes and the Washington State Constitution, defendants
8 acted unlawfully and violated the spirit of Article I Section 3, and Article 1 Section 12, by
9 conspiring with numerous organizations, city and county governments and agencies to
10 knowingly enter into a "partnership" with state and local law enforcement, treatment
11 professionals and local municipalities through the AWC and WSAC, to create a separate
12 "information", training, and education process that purposely held discussions internally, and in
13 some cases under the cloak of the attorney client privilege to frustrate on open rule making
14 process, that took input on I-502 rulemaking, which in most cases never made it to the pre-
15 notice inquiry or rulemaking file for Worthington or others to rebut.
16

17 IX. CAUSES OF ACTION

18 9.1 **APA Petition For Review I-502 rules were Adopted Without Compliance with**
19 **Statutory Rule-Making Procedures Outlined in RCW 34.05.375.**

20 9.2 Plaintiff re-alleges and incorporates by reference paragraphs 1 through 8.7

21 9.3 By their acts and omissions, as described above, the Washington State Liquor Control
22 Board and members of the "partnership" violated many subsections RCW 34.05.310 through
23 34.05.395, and invalidated the I-502 rules pursuant to RCW 34.05.375. WSLCB violated
24 RCW 34.05.310 (iii) and (iv), RCW 34.05.312, RCW 34.05.315 (f), RCW 34.05.325 (4), (5),
25 RCW 34.05.370 (2) (c), (2) (h), and that the rules for I-502 are invalid pursuant to
26

1 RCW34.05.375, RCW 34.05.570 (2) (b) (ii) (c), RCW 34.05.570 (3) (C).

2 9.4 The WSLCB either omitted, removed and withheld information from the rulemaking file,
3 failed to identify negotiated rulemaking and who it was negotiating rulemaking with in any pre-
4 notice inquiry the agency filed, preventing transparent rule making for I-502 rules and
5 invalidated I-502 rules. The agency does not have an accurate agency record for Judicial Review

6 **9.5 APA Petition for Review Due Process Claims-Rule Making**

7 9.6 Plaintiff re-alleges and incorporates by reference paragraphs 1 through 9.4

8 9.7 By their acts and omissions, as described above, the Washington State Liquor Control
9 Board and members of the “partnership” violated many subsections RCW 34.05.310 through
10 34.05.395, and invalidated the I-502 rules pursuant to RCW 34.05.375. WSLCB violated
11 RCW 34.05.310 (iii) and (iv), RCW 34.05.312, RCW 34.05.315 (f), RCW34.05.325 (4), (5),
12 RCW 34.05.370 (2) (c), (2) (h), and that the rules for I-502 are invalid pursuant to
13 RCW34.05.375, RCW 34.05.570 (2) (b) (ii) (c), RCW 34.05.570 (3) (C), Article 1 Section 3,
14 and Article 1 Section 12 of the Washington State Constitution, when WSLCB conducted rule
15 making for I-502. I-502 rules were adopted without compliance with statutory rule-making
16 procedures outlined in RCW 34.05.375.

17 9.8 Plaintiff alleges defendants used I-502 rulemaking to create a separate process to get
18 information from law enforcement, treatment professionals and local governments that
19 Worthington was not able to participate in and rebut comments and input at the time they were
20 made to the WSLCB. Worthington has no idea what work the “External Team” did and its work
21 is not in the rulemaking file. The WSLCB either omitted, removed and withheld information
22 from the rulemaking file, failed to identify negotiated rulemaking and who it was negotiating
23 rulemaking with in any pre-notice inquiry the agency filed, preventing transparent rule making
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25
26

1 for I-502 rules and invalidated I-502 rules.

2 **9.9 Complaint for Declaratory Judgment Substantive Due Process-Rule making**

3 9.10 Plaintiff re-alleges and incorporates by reference paragraphs 1 through 9.8

4 9.11 By their acts and omissions, defendants have created an uncertainty in the conduct of
5 State and local officers and the implementation I-502 and its rule making process. A declaratory
6 judgment and the relief requested below is necessary to resolve the uncertainty concerning the
7 duties of the WSLCB under their responsibilities to conduct rule making for I-502 as required by
8 procedural due process under RCW 34.05 and the Washington State Constitution.

9 9.12 Plaintiff alleges the board used the I-502 rule making process to create a separate process
10 to obtain info from law enforcement, treatment professional, and local governments and
11 Worthington was not allowed in that secret and separate process. The board's actions are
12 unconstitutional as a violation of substantive due process provisions of RCW 34.05 and the
13 Washington State Constitution. The rules were adopted without compliance with statutory rule-
14 making procedures outlined in RCW 34.05.375, because WSLCB did not identify negotiated
15 rulemaking, who they were conducting negotiated rulemaking with in any pre-notice inquiry the
16 agency filed, maintain an original rulemaking file for two years

17 **9.13 Complaint for Declaratory Judgment Procedural Due Process- Rule Making**

18 9.14 Plaintiff re-alleges and incorporates by reference paragraphs 1 through 9.12

19 9.15 Article I, Section 3 of the Washington State Constitution provides that "[n]o
20 person shall be deprived of life, liberty, or property, without due process of law."

21 9.16 By their acts and omissions, defendants violated RCW 34.05.310, RCW 34.05.312,
22 RCW34.05.315(f), RCW 34.05.325 (4), (5), RCW 34.05.370 (2) (c), (2) (h), and that the
23 rules for I-502 are invalid pursuant to RCW 34.05.375, RCW 34.05.570 (2) (b) (ii) (c), RCW
24
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1 because federal grant recipients and those job depends on the prohibition of marijuana were
2 given special access to the rule making process by the WSLCB to illegally and
3 unconstitutionally influence the I-502 rulemaking process.

4 X. REQUEST FOR RELIEF UNDER THE APA.

5 10.1 For the reasons set forth herein, Petitioner Worthington respectfully request that the
6 Court vacate and set aside WSLCB's decision denying Petitioner Worthington's Petition to
7 repeal all I-502 rules and for new for Rulemaking for I-502 as contrary to law, not supported by
8 substantial evidence, and arbitrary and capricious, and remand the matter for further proceedings
9 consistent with all applicable law. In addition, Petitioner Worthington respectfully request that
10 the Court grant such other relief as this Court deems appropriate. RCW 34.05.574. Finally,
11 Petitioner Worthington request that fees and costs be awarded pursuant to RCW 4.84.350 and
12 other applicable law.
13

14 XI. REQUEST FOR RELIEF UNDER RCW 7.24

15 11.1 Wherefore, Plaintiff respectfully requests the following relief:

16 11.2 A declaration that all I-502 rules and WAC's violate statutory, substantive and
17 procedural due process, and after giving special privileges and immunities as applied to the facts
18 set forth herein and are therefore invalid.

19 11.3 A declaration that the defendants "partnership" formed to affect the rulemaking for I-502
20 violated Article 1 Section 3, and Article 1 Section 12 of the Washington State Constitution.

21 11.4 A declaration that all I-502 rules and WAC's are unconstitutional pursuant to Article I,
22 section 3 of the Washington State Constitution.

23 11.5 A declaration that all I-502 rules and WAC's are unconstitutional pursuant to Article I,
24 section 12 of the Washington State Constitution.
25
26

1 11.6 An Injunction be entered that enjoins WSLCB from participating in current and future I-
2 502 rulemaking Processes because; they are a member agency of the State Prevention
3 Enhancement Project (SPE) receiving federal grants to keep marijuana out of Washington
4 State communities; has a major conflict of interest as a regulatory agency for the recreational
5 sale of Marijuana; and cannot legally make laws or rules governing issues that affect the
6 activities, goals and milestones covered in those federal grants.

7 11.7 Such further relief that this court seem just and appropriate.

8 11.8 That the plaintiff be allowed to amend his complaint to correct mistakes.
9

10 VERIFICATION

11 I, John Worthington, declare as follows:

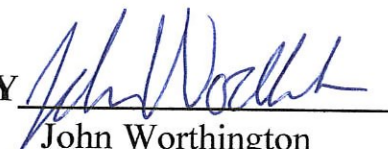
12 1. I am a medical marijuana patient now required to obtain marijuana from an I-502 recreational
13 store in order to vaporize and consume natural unprocessed marijuana for medical purposes.

14 2. I have personal knowledge of the Washington State Liquor Control Board (WSLCB) and its
15 activities, the activities of the Governor's office, the Attorney General's office and the rest of the
16 activities of a verified partnership, including those set out in the foregoing *Judicial Review* and
17 *Complaint*, and if called upon to testify I would competently testify as to the matters stated
18 herein.

19 3. I verify under penalty of perjury under the laws of the United States of America
20 that the factual statements in this *Judicial Review* and *Complaint* concerning the (WSLCB), and
21 its I-502 rulemaking partnership are true and correct.

22 Respectfully submitted this 24th day of August, 2015.

23 BY



John Worthington
4500 SE 2ND PL
RENTON WA.9805

OPENING BRIEF

1 (1) The agency action has prejudiced or is likely to prejudice that person; (2) That
2 person's asserted interests are among those that the agency was required to
3 consider when it engaged in the agency action challenged; and (3) A judgment in
4 favor of that person would substantially eliminate or redress the prejudice to that
5 person caused or likely to be caused by the agency action.

6 "Courts will reverse an administrative order if), (1) it is based on an error of
7 law, (2) it is unsupported by substantial evidence, (3) it is arbitrary or capricious,
8 (4) it violates the constitution, (5) it is beyond statutory authority, or (6) the agency
9 employs improper procedure. RCW 34.05.570 (3); Olmstead v. Dep't of Health,
10 Med. Section, 61 Wn. App. 888, 891-92, 812 P.2d 527 (1991).

11 "The party challenging the validity of the agency's action bears the burden of
12 showing that the action was invalid." RCW 34.05.570(1) (a). "Administrative
13 regulations are presumed to be constitutional." Nguyen v. Dep't of Health Med.
14 Quality Assurance Comm'n, 144 Wn.2d 516, 536, 29 P.3d 689 (2001).

15 "The party challenging a statute or regulation's constitutionality bears the
16 burden of proving its unconstitutionality beyond a reasonable doubt." Madison v.
17 State, 161 Wn.2d 85, 92, 163 P.3d 757 (2007). "Where a party challenges the
18 validity of a rule, and the rule's threatened application "immediately threatens to
19 interfere with or impair" the party's legal rights or privileges, the party may petition
20 the superior court for a declaratory judgment." RCW 34.05.570 (2) (b). 

21 "To decide if a regulation should be overturned because it could not
22 conceivably be the product of a rational decision-maker, we hold that the proper
23 analysis is the 3-part test suggested by amicus, Professor Andersen, and utilized by
24 the federal courts" (See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut.
25 Auto. Ins. Co., 463 U.S. 29, 77 L.Ed.2d 443, 103 S.Ct. 2856 (1983).

26 The court's task is to determine if a given regulation is reasonable without
substituting this court's judgment for that of the agency. First, the court inquires if

V. CONCLUSION & REQUEST FOR RELIEF.

For the reasons set forth herein, Petitioner Worthington respectfully request that the Court vacate and set aside WSLCB's decision denying Petitioner Worthington's Petition to repeal all I-502 rules and for new for Rulemaking for I-502 as contrary to law, because it is not supported by substantial evidence, and is arbitrary and capricious; and that, agency has acted in violation of the constitution. Worthington respectfully requests the matter be remanded for further proceedings consistent with all applicable law. In addition, Petitioner Worthington respectfully request that the Court grant such other relief as this Court deems appropriate. RCW 34.05.574. Petitioner Worthington request that fees and costs be awarded pursuant to RCW 4.84.350 and other applicable law.

A declaration that all I-502 rules and WAC's violate statutory, substantive and procedural due process, and after giving special privileges and immunities as applied to the facts set forth herein and are therefore invalid.

A declaration that the defendants "partnership" formed to affect the rulemaking for I-502 violated Article 1 Section 3, and Article 1 Section 12 of the Washington State Constitution.

A declaration that all I-502 rules and WAC's are unconstitutional pursuant to Article I, section 3 of the Washington State Constitution.

A declaration that all I-502 rules and WAC's are unconstitutional pursuant to Article I, section 12 of the Washington State Constitution.

An Injunction be entered that enjoins WSLCB from participating in current and future I-502 rulemaking Processes because; they are a member agency of the State Prevention Enhancement Project (SPE) receiving federal grants to keep marijuana out of Washington State communities; has a major conflict of interest as a regulatory agency for the recreational sale of Marijuana; and cannot legally make

REPLY BRIEF

1 relevant statutes. Petitioner Worthington request that fees and costs be awarded pursuant to
2 RCW 4.84.350 and other applicable law; and,

3 A declaration that all I-502 rules and WAC's violate statutory, substantive and procedural
4 due process outlined in RCW 34.05.375 and applied to the facts set forth herein and are therefore
5 invalid pursuant to RCW 34.05.570 (2) (c). *l **

6 A declaration that the defendants "partnership", formed to affect the rulemaking for I-502
7 violated Article 1 Section 3, and Article 1 Section 12 of the Washington State Constitution.

8 A declaration that all I-502 rules and WAC's are unconstitutional pursuant to Article I,
9 section 3 of the Washington State Constitution.

10 A declaration that all I-502 rules and WAC's are unconstitutional pursuant to Article I,
11 section 12 of the Washington State Constitution.

12 An Injunction be entered that enjoins WSLCB from participating in current and future I-502
13 rulemaking Processes because; they are a member agency of the State Prevention Enhancement
14 Project. (SPE)

15 An Injunction be entered that enjoins WSLCB from entering into secret rulemaking
16 partnerships and requires all negotiated rulemaking and the entities being negotiated with to be
17 identified in the pre-notice inquiry with all comments place in one original rulemaking file.

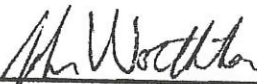
18 An Injunction be entered that enjoins the Governor's office from interfering with
19 rulemaking using Results Washington or the Governor's policy office.

20 An Injunction be entered that enjoins the Washington State Attorney General from
21 conducting rulemaking in secret or under the cloak of the Attorney client privilege while
22 representing agencies conducting rulemaking as members of an external team or the SPE.

23 Such further relief that this court deems just and appropriate including reasonable costs
24 awarded plaintiff for this action.

25 Respectfully submitted this 20th day of April, 2016.

26 BY




John Worthington
4500 SE 2ND PL
RENTON WA.98059

1 **4.4 Worthington Alleged the Rules for I-502 were Invalid Pursuant to RCW 34.05.375**
2 **Substantial Compliance with Procedures.**

3 **4.5 RCW 34.05.375 reads in relevant part:**

4 No rule proposed after July 1, 1989, is valid unless it is adopted in substantial compliance
5 with RCW 34.05.310 through 34.05.395. Inadvertent failure to mail notice of a proposed
6 rule adoption to any person as required by RCW 34.05.320(3) does not invalidate a rule.
7 No action based upon this section may be maintained to contest the validity of any rule
8 unless it is commenced within two years after the effective date of the rule

9 In Worthington's petition, Worthington alleged the rules for I-502 were invalid pursuant to
10 RCW 34.05.375. Worthington supported his allegations by submitting documents showing
11 treatment professionals and law enforcement holding secret meetings to discuss I-502 rules.
12 Worthington respectfully argues the WSLB decision that it complied with the APA, and RCW
13 34.05, was arbitrary and capricious and was not supported by the record. Pursuant to RCW
14 34.05.562, Worthington will add documents and allegations to the record to support his
15 allegations that the rules should be found invalid pursuant to RCW 34.05.375, and respectfully
16 requests this additional information be considered in review. 

17 **4.6 The WSLCB Failed to Comply with RCW 34.05.310**

18 **4.7 RCW 34.05.310 reads in relevant part:**

19 (1)(a) To meet the intent of providing greater public access to administrative rule making
20 and to promote consensus among interested parties, agencies must solicit comments from
21 the public on a subject of possible rule making before filing with the code reviser a notice
22 of proposed rulemaking under RCW 34.05.320. The agency must prepare a statement of
23 inquiry that:

24 (iii) Identifies other federal and state agencies that regulate this subject, and describes the
25 process whereby the agency would coordinate the contemplated rule with these agencies;

26 (iv) Discusses the process by which the rule might be developed, including, but not
limited to, negotiated rule making, pilot rule making, or agency study;

The Washington State Department of Health (DOH) through its Environmental Public

1 In Worthington's petition, Worthington alleged the rules for I-502 were invalid
2 pursuant to RCW 34.05.375. Worthington supported his allegations by submitting
3 documents showing treatment professionals and law enforcement holding secret
4 meetings to discuss I-502 rules. Worthington respectfully argues the WSLB
5 decision that it complied with the APA, and RCW 34.05, was arbitrary and
6 capricious and was not supported by the record. Pursuant to RCW 34.05.562,
7 Worthington will add documents and allegations to the record to support his
8 allegations that the rules should be found invalid pursuant to RCW 34.05.375, and
9 respectfully requests this additional information be considered in review pursuant
10 to RCW 34.05.570(4) (b) ("The court may hear evidence, pursuant to RCW
34.05.562, on material issues of fact raised by the petition and answer.").

11 **F. The WSLCB Failed to Comply with RCW 34.05.310**

12 RCW 34.05.310 reads in relevant part:

13 (1)(a) To meet the intent of providing greater public access to administrative
14 rule making and to promote consensus among interested parties, agencies
15 must solicit comments from the public on a subject of possible rule making
16 before filing with the code reviser a notice of proposed rulemaking under
RCW 34.05.320. The agency must prepare a statement of inquiry that:

17 (iii) Identifies other federal and state agencies that regulate this subject, and
18 describes the process whereby the agency would coordinate the
19 contemplated rule with these agencies;

20 (iv) Discusses the process by which the rule might be developed, including,
21 but not limited to, negotiated rule making, pilot rule making, or agency
22 study;

23 The Washington State Department of Health (DOH) through its Environmental
24 Public Health Division has shown that they are working on rules for marijuana
25 infused products with the WSLCB. The DOH worked on rules with WSLCB and
26 they should have been listed in the pre-notice inquiry but they were not. The

1 RCW 34.05.570 governs judicial review of an agency rule, and it permits review in the
2 context of any review proceeding under the APA so long as the agency that promulgated the rule
3 is a party in the action.¹ RCW 34.05.570 (2) (a). A court may declare a rule invalid if; the rule
4 was adopted without compliance with statutory rule-making procedures. RCW 34.05.570 (2) (c).

5 Here, Worthington alleged the WSLCB tampered with the rulemaking file² in his petition
6 for adoption amendment repeal and alleged the rule was adopted without compliance with
7 statutory rule-making procedures.³ That allegation can be found in the agency record at AR 118.
8 WSLCB cannot show they looked at the rulemaking file to determine if it had in fact been
9 tampered with. In the certification of the agency record, WSLCB states the following:

10 **I, Karen McCall, the undersigned Rules Coordinator for the Washington State
11 Liquor and Cannabis Board (Board), hereby certify that the following record
12 contains all the matters considered in the June 10, 2015, Special Board meeting and
13 administrative proceeding for the above-entitled matter. (Certificate of Agency
14 Record)**

15 Because the agency record does not contain the rulemaking file, and because WSLCB certified
16 that the current agency record were all the matters considered, WSLCB decision denying
17 Worthington's petition for violations of RCW 34.05.375, specifically RCW 34.05.370, was
18 arbitrary and capricious, and should be overturned. **The rules for I-502 should be held invalid
19 until the rulemaking file can be restored during a new rulemaking process.**

20 A petition for review in superior court must identify the relevant agency action at
21 issue. RCW 34.05.546 (4). The agency must then transmit to the court a certified copy
22 of the agency record relating to the matter under review. RCW 34.05.566 (1). Here,
23 Worthington alleged one of the agency actions at issue was whether WSLCB adopted I-
24 502 rules in substantial compliance with RCW 34.05.375, which encompasses RCW
25 34.05.310 through 34.05.395. The WSLCB board made a decision that it complied
26 with RCW 34.05.375.⁴ WSLCB arguments Worthington only made arguments under
the appearance of fairness doctrine are factually incorrect and are not supported by the

¹ WSLCB is in the above captioned matter.

² Dec. of Worthington Exhibit 1.

³ AR 58-63, AR 110-120.

⁴ AR 2-3

APPENDIX E

EMT - December 12

I-502 Update Engaging public + local govt
in policy making + rule making

Statewide meetings?
Process?

Rick contacted AWC (Webinar)
Candace Bach - said
would be able to host future
Feb 14-15, by day for cities/
counties in Dry, want
LCB to participate
- When?

Chris - Important to have ongoing
dialogue w/ cities + counties
Need both eastside/westside
input



Some may not want public
discussion.

Create process in Community
Does Bd create their own
process which is separate to
get info.?



Disagree in Mary T on public
meetings.

APPENDIX F

A P P E A R A N C E S

For the Plaintiff: **Arthur West**
Pro Se
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Awestaa@gmail.com

For the Defendant: **Bruce L. Turcott**
Assistant Attorney General
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Licensing & Administrative
Law Division
P.O. Box 40110
Olympia, WA 98504-0110
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BruceT1@atg.wa.gov

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1 November 21, 2014,

Olympia, Washington

2 MORNING SESSION

3 The Honorable Judge Christine M. Schaller, Presiding

4 Kathryn A. Beehler, Official Reporter

5 --o0o--

6 THE COURT: Number 9, West versus the
7 Washington State Liquor Control Board, et al. This
8 matter comes before the court for a ruling.

9 Mr. Turcott is present on behalf of --

10 MR. TURCOTT: Yes.

11 THE COURT: -- the defendants, and Mr. West is
12 present representing himself in this matter as
13 plaintiff. I previously made a ruling on all issues
14 related to this Public Records Act case back on
15 July 11, 2014. At the conclusion of the case and the
16 conclusion of my ruling, I invited additional
17 briefing solely on the issue of attorney-client
18 privilege and the issue of waiver. And other than
19 that specific amount of documents that were provided
20 to Mr. West by way of this public records request and
21 these documents which are redacted, I have ruled as
22 it relates to every other portion of not only the
23 July 3, 2013, PRA request, but there was also an
24 October public records request, and my full ruling is
25 part of the record from the July 11 hearing.

1 The defendants filed a brief and additional
2 evidence after the July 11, 2014, hearing. Mr. West
3 did not file additional briefing; however, he filed a
4 copy of the redacted records that he had been
5 provided. And this is specifically related to a
6 public records request that Mr. West made on July 3,
7 2013, for the I-502 rule-making file.

8 RCW 42.56.210(3) indicates that an agency is
9 required to specify when they redact records what
10 exemption applies, and they are required to include a
11 statement of the specific exemption authorizing the
12 withholding of the record or part of the record and a
13 brief explanation of how the exemption applies to the
14 record. And in this case, to be clear, no documents
15 were withheld entirely, but some of the documents
16 were redacted based upon an assertion of an
17 attorney-client privilege.

18 RCW 34.05.370 is the statute regarding the
19 rule-making file. And it requires that a rule-making
20 file shall be maintained for each proposed rule for
21 publication in the state register. The file and
22 materials incorporated by reference shall be
23 available for public inspection. That's what (1) of
24 the statute requires. So it is clear that the
25 rule-making file is a public file, because it shall

1 be available for public inspection.

2 Subsection (2) of the statute indicates that the
3 agency rule-making file shall contain all of the
4 following. And letters (a) through (g) indicate all
5 documents that are required to be contained in any
6 rule-making file. I am not going to state those at
7 this time, because those specific criteria are not
8 part of the issue before the court. But subsection
9 (h) indicates that in addition to all the records
10 that are required, the agency rule-making file shall
11 also contain any other material placed in the file by
12 the agency.

13 Subsection (3) of this statute indicates,

14 "Internal agency documents are exempt from
15 inclusion in the rule-making file under subsection
16 (2) of this section to the extent they constitute
17 preliminary drafts, notes, recommendations, and
18 intra-agency memoranda in which opinions are
19 expressed or policies formulated or recommended,
20 except that a specific document is not exempt from
21 inclusion when it is publicly cited by an agency in
22 connection with its decision."

23 I read this on the plain language that an agency
24 does not have to include, keep in their rule-making
25 file any of the documents that are set forth under

1 subsection (3), because they are clearly exempt,
2 again, unless there's a document that is referenced
3 in connection with the ultimate decision made by the
4 agency.

5 The defendants have acknowledged in this matter
6 that these documents, which are clearly
7 attorney-client privilege documents – I don't think
8 there's any question about that – were placed in the
9 rule-making file. And the State has tried to argue
10 that there is somehow a difference between the
11 working version of the file and the final version of
12 the file. But as I read the statute, it doesn't
13 really make a distinction. Clearly the final version
14 is what comes to the court if the court has to make a
15 decision as to rules that are promulgated. But
16 certainly the statutes aren't separate as it relates
17 to what a working file is versus the final
18 rule-making file.

19 The agency has argued that either, first, the
20 documents are exempt from inclusion and are not
21 required to be disclosed under RCW 34.05.370(3),
22 because these were internal agency documents and
23 therefore should be exempted. And I agree that had
24 they not been placed in the public file, that these
25 would have been documents that were not required to

1 be in the rule-making file and there would be no
2 reason to disclose them or keep them in the
3 rule-making file, because they weren't required under
4 the law. They are certainly not one of the be seven
5 specific items that have to be in the rule-making
6 file as set forth in subsection (2) of RCW 34.05.370.

7 The second argument that the State makes is that
8 if the court were to find that they had been placed
9 in the rule-making file, and if that could somehow
10 make them a public document, that it was an
11 inadvertent disclosure of the attorney-client
12 privilege. And before I go on with my ruling, I want
13 to indicate that certainly, as a lawyer, this court
14 understands the importance of the attorney-client
15 privilege, why it is such an important privilege, why
16 it is protected, and why a lot of materials cannot be
17 disclosed and are not disclosed during the course of
18 litigation, under public records requests, and the
19 like, because that information between the attorney
20 and the client should remain confidential, as long as
21 they keep it confidential. And so as I go through my
22 ruling, I think that all lawyers and the court keep
23 that in the front of their mind because of the
24 importance of that privilege. But the privilege is
25 not absolute, as everyone knows, as well.

1 Exemptions from disclosure pursuant to the PRA are
2 to be narrowly construed. If a statute does not
3 conflict with the PRA, the court should treat it as
4 supplementing the PRA. So this was a public records
5 request for the I-502 file. However, Mr. West didn't
6 have to make a public records request. He could have
7 simply gone to the agency and requested to review the
8 rule-making file, because it is to be open to public
9 inspection under the clear terms of RCW 34.05.370.

10 So in this case I am looking at both of these
11 statutes together, although this is a PRA request,
12 and I don't find that these statutes conflict with
13 one another for the purposes of my ruling today. And
14 I find that RCW 34.05.370 is a statute that can be
15 read in conjunction with the PRA.

16 In enacting the 1988 APA, the Legislature intended
17 to provide greater public access to administrative
18 decision making. The purpose of rule-making
19 procedures is to ensure that members of the public
20 can participate meaningfully in the development of
21 agency policies which affect them. I have, of
22 course, reviewed all of the case law that has been
23 cited in the briefing. One of the cases that was
24 cited was *Zink v. The City of Mesa*, 162 Wn. App. 688.
25 That's a 2011 case. And it talks about the issue of

1 the attorney-client privilege.

2 Before I get to that, certainly the agency, as
3 I've indicated, has to make available the public
4 records that are requested to be reviewed. And they
5 do not have to make available, as I've indicated
6 previously, the attorney-client privilege records.
7 And they can set forth that exemption.

8 *Zink v. The City of Mesa* is a case where there
9 were two different types of documents that were
10 attorney-client privilege that were disclosed. Some
11 of the records were disclosed during the course of
12 litigation, and the court talked about those records.
13 There were another set of attorney-client privilege
14 records which I believe had been reviewed in camera
15 by the judge, and those got disclosed to the other
16 side by the clerk.

17 So the court specifically found in that case that
18 that was an inadvertent disclosure of those records
19 that could not waive the attorney-client privilege,
20 because you had this third-party clerk who sent a
21 copy of these documents - and I didn't write this
22 down, but I believe it was on appeal - to the other
23 side. And the court said, no, that is not going to
24 waive the privilege. That was a mistake.

25 As I indicated, the issue in this case before this

1 court is not whether or not the redacted documents
2 were attorney-client privilege documents. The issue
3 is whether or not the client, who is the defendant in
4 this matter, revealed the attorney-client privileged
5 information to a third party and therefore failed to
6 keep the information confidential. That is the whole
7 issue before this court, if defendants failed to keep
8 their privileged information confidential. Because
9 when a client reveals information to a third party,
10 the attorney-client privilege is waived unless the
11 third party is necessary for the communication or has
12 retained the attorney for a common interest. I think
13 the most well known example of failing to keep
14 information confidential is the example of the lawyer
15 and a client meeting in a public place like a
16 restaurant and discussing things and having that
17 overheard by a third party.

18 In the *Mesa* case, as I've been discussing, the
19 court did find that those documents that were
20 disclosed by the clerk were an inadvertent
21 disclosure, and they ordered that the privilege was
22 not waived. They also ordered, however, that the
23 disclosure of the documents during the course of the
24 litigation process did, in fact, waive the
25 attorney-client privilege as to those documents only.

1 Other cases that have been cited were prior to
2 2011 and are instructive. Most of those cases talked
3 about the waiver of attorney-client privilege in the
4 context of discovery and litigation in a case. And,
5 ultimately, those cases were actually incorporated
6 into Evidentiary Rule 502 and the test regarding the
7 waiver of attorney-client privilege that was
8 ultimately adopted into Evidentiary Rule 502. That
9 rule doesn't apply, because that rule specifically
10 talks about applying only to litigation cases or
11 disclosure to a Washington office or agency. And
12 this was not a disclosure made to an agency. This is
13 whether or not an agency disclosed information.

14 The rules coordinator, who is the one who was
15 responsible for the I-502 file, is obviously a very
16 important thing as it relates to my ruling in this
17 matter. RCW 34.05.312 is the statute for a rules
18 coordinator. And it indicates that each agency shall
19 designate a rule coordinator who shall have knowledge
20 of the subjects of rules being proposed, maintain the
21 records of any such action, respond to public
22 inquiries. And I'm just reading portions of this
23 statute.

24 The rules coordinator may be an employee of
25 another agency. The state has argued that their

1 rules coordinator, who was Karen McCall, made an
2 inadvertent mistake by including these documents in
3 what is a public file, open to public inspection,
4 that perhaps there were some training issues related
5 to her understanding of what should or should not go
6 into the rule file. And they have also argued that
7 because a rules coordinator can be an employee of
8 another agency, the court should look at that issue
9 on the issue of inadvertence.

10 Clearly, this statute says you're going to have a
11 rules coordinator who is going to maintain your rule
12 file, and they need to know what's going on. They
13 need to have knowledge of what the subject is as it
14 relates to the rule. They have to maintain the
15 record, and they have to be prepared to respond to
16 public inquiries. And so one agency can decide to
17 have someone who doesn't work for their agency be
18 their rule coordinator. But if they make that
19 choice, certainly, they would have to ensure that the
20 rules coordinator had all of this knowledge and knew
21 how to maintain the file.

22 In this case the rules coordinator was, in fact,
23 working for the Liquor Control Board, and that was
24 Karen McCall. Her sworn testimony indicates that as
25 to the I-502 rule-making file, she was in charge of

1 collecting the documents. She was the person who
2 maintained the rule-making file. And she was
3 essentially a record keeper.

4 The I-502 rule-making file consisted of several
5 thousand documents that filled two document boxes.
6 When collecting documents forwarded to her by the
7 board members or agency staff, that is what she put
8 into the rule-making file. She didn't choose
9 documents. Documents were specifically sent to her
10 as the rules coordinator for placement in the
11 rule-making file.

12 She did not check for duplicates but placed
13 everything in the file. She did not intentionally
14 place any attorney-client privilege documents into
15 what she quoted as the working version of the
16 rule-making file. And as I indicated previously, the
17 statutes do not differentiate as it relates to what
18 is public in a public file, whether it is the working
19 file or the final file.

20 She testified that if there was ever any doubt in
21 my mind as to whether something belonged in the file,
22 I would have scheduled time to attend the executive
23 management team meeting to allow the board to make
24 the final determination. And although I was really
25 unclear as to why Mr. West filed a copy of the

1 documents that were redacted, it ultimately has
2 provided me a relevant piece of information. Because
3 she said this was inadvertent. It was a mistake. I
4 didn't know. I didn't know that they were privileged
5 documents or I would have never put them in, and if
6 I'd had a question about putting these documents in a
7 public file available for public disclosure, I would
8 have asked.

9 Two-thirds of these documents on the bottom of the
10 page say in capital letters, "confidential
11 attorney-client privileged communication. Do not
12 disclose." There can be no confusion in anyone's
13 mind what these documents were. They were sent to
14 her by either Liquor Control Board members or people
15 who worked for the agency. They were sent to her as
16 the rules coordinator. Her sole job for this file
17 was to collect and maintain the records of the
18 actions, to keep the file, and respond to public
19 inquiries. And what is part of that file, under the
20 plain language of the statute, includes any other
21 material placed in the file by the agency.

22 The agency in this case failed to keep their
23 attorney-client documents confidential, because they
24 chose, not inadvertently; they purposefully chose to
25 place these documents in the public rule-making file.

1 And again, I agree with the State. They weren't
2 required to, because subsection (3) of RCW 34.05.370
3 said, those type of documents, they don't go in the
4 public rule-making file. They are exempt. But the
5 State Liquor Control Board lost that attorney-client
6 privilege when they failed to keep that information
7 confidential by purposefully placing those materials
8 in a public file available for public inspection.

9 So I find that there was a violation of the Public
10 Records Act, because those documents were
11 inappropriately redacted when they were provided to
12 Mr. West. And so I would order that they be
13 disclosed to him. And I will take up the issue of
14 penalties, which will have to be done at a subsequent
15 hearing. And the court will at that time consider
16 the *Yousoufian* factors.

17 I also recognize, of course, I have no idea what
18 is in these records, because I have only seen
19 redacted versions, and I don't expect to see the
20 other documents. I recognize that the State may want
21 to appeal my ruling in this case, and the court will
22 take up issues as it relates to that and a request
23 for a stay if the State is going to make that request
24 as it relates to the disclosure of documents at a
25 different hearing.

1 MR. TURCOTT: And Your Honor, I understand
2 this -- so this case has been consolidated with a
3 case that Judge Price has. Are you aware of that?
4 And the Clerk's Office, I think, failed to get that
5 order. And we were told earlier this week that they
6 were working on it, that they were processing it, and
7 so --

8 MR. WEST: That's the --

9 THE COURT: Hold on just a moment.

10 MR. WEST: Oh.

11 THE COURT: The portion that was consolidated
12 to Judge Price is the rule-making challenge --

13 MR. TURCOTT: Correct.

14 THE COURT: -- because his case is a rule
15 making challenge. There is a portion of this case
16 undecided that is a rule-making challenge, as well.
17 There was also public records issues, and that's what
18 I have decided in this case.

19 So I recognize that Judge Price will be deciding
20 the rule-making issues, which makes sense, since I'm
21 not going to be hearing this case any longer because
22 I'm changing to a different rotation. Actually, when
23 the other case was filed, there was a request that I
24 hear it, and I said no, because I wasn't going to be
25 here any longer. So yes, I know that.

1 MR. TURCOTT: Yeah. I understand that. I'm
2 just wondering about subsequent entry of an order and
3 a possible entry of a stay. And would -- would you
4 be able to handle that?

5 THE COURT: Well, certainly Judge Price isn't
6 going to determine whether or not my ruling is
7 stayed. You will be able to set hearings in front of
8 me. I'm going to be at Family and Juvenile Court.

9 MR. TURCOTT: Okay.

10 THE COURT: I'm not gone. I'm just going to a
11 different rotation. And so for the entry of the
12 order and for a stay and those items, those can be
13 noted in front of me. I will have a motion calendar
14 every other Friday at Family and Juvenile Court.

15 MR. WEST: To the extent there's any
16 ambiguity, I don't have any objection to these are
17 matters being severed for the convenience of the
18 State if they aren't clearly already. I think that
19 that's appropriate.

20 THE COURT: Well, I think that the public
21 records issue have now been decided --

22 MR. WEST: Okay.

23 THE COURT: -- the only remaining issue in
24 this case is the rule-making issue, and that is, to
25 my understanding, what the issue in front of

1 Judge Price is.

2 MR. TURCOTT: Correct.

3 MR. WEST: Very good, Your Honor.

4 THE COURT: Thank you.

5 MR. WEST: I will confer with counsel and get
6 a transcript produced and prepare an order next week.
7 Would that work for the court? The week after?

8 THE COURT: Again, you'll have to set it in
9 front of me at Family and Juvenile Court if there's
10 not agreement as to the terms of the order. And you
11 can contact Ms. Moore, who is my current judicial
12 assistant, and she will help in the coordination of
13 getting matters set in front of me at the other
14 courthouse.

15 MR. WEST: Thank you, Your Honor. We'll do
16 our best to agree and schedule any stay or other
17 proceedings that are necessary.

18 MR. TURCOTT: Okay. Thank you.

19 THE COURT: Thank you.

20
21 (Conclusion of November 21, 2014, Proceedings.)
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25

SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

The Honorable Judge Christine M. Schaller, Presiding

Arthur West,

Plaintiff,

VS.

Washington State Liquor Control
Board, et al,

Defendant.

Case No. 13-2-02227-1

REPORTER'S CERTIFICATE

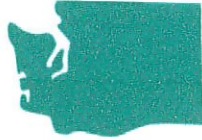
STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I, Kathryn A. Beehler, Official Reporter of the Superior Court of the State of Washington, in and for the county of Thurston, do hereby certify:

That the foregoing pages, 1 through 19, inclusive, comprise a true and correct transcript of the proceedings held in the above-entitled matter, as designated by Counsel to be included in the transcript, reported by me on the 21st day of November, 2014.

Kathryn A. Beehler, Reporter
C.C.R. No. 2248

APPENDIX G



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • www.governor.wa.gov

EXECUTIVE ORDER 13-04

RESULTS WASHINGTON

PREAMBLE

Washington State and its public servants are committed to the continuous improvement of services, outcomes, and performance of state government, to realize a safe, beautiful and healthy place to live and work. In order to achieve these aims, “Results Washington,” an innovative, data-driven, performance management initiative, will drive the operations of state government through Lean thinking. This initiative will aid state leaders in fact-based decision-making, enhancing the breadth of understanding, focus, and commitment to our customers—all Washingtonians.

WHEREAS, preparing students for the future, enhancing the conditions for job creation, valuing our environment, our health, and our people by fostering the spirit of innovation builds a thriving Washington; and

WHEREAS, immense opportunity exists to create a legacy of performance and accountability for the future; and

WHEREAS, with a unique strategy aligning policy, budget, and performance objectives, state government can be as innovative as the people it represents; and

WHEREAS, comprehensive data analysis serves an important role in increasing public accountability; and

WHEREAS, to remain leaders in this area, a state system rooted in cross agency collaboration that strives to improve services to its customers by analyzing data and coordinating performance improvement efforts is necessary; and

WHEREAS, “Quality Improvement,” “Government Management, Accountability and Performance,” and “Lean Transformation” generated improved services for our citizens, including better use of resources, decreased waste and delays, and increased transparency. Further empowering executive leaders, managers, and frontline employees across state government will invigorate state employees to build upon past successes;

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, by virtue of the power vested in me by the Constitution and statutes of the state of Washington do, effective immediately, hereby order and direct as follows:

1. Results Washington.

Results Washington is created within the Office of the Governor. Results Washington shall develop strategic improvement plans to manage, monitor and implement the five priority goals of this initiative: (1) World-Class Education; (2) Prosperous Economy; (3) Sustainable Energy and a Clean Environment; (4) Healthy and Safe Communities; and (5) Effective, Efficient, and Accountable Government.

The Director and staff of Results Washington shall oversee the development and implementation of the policies and services necessary to ensure successful implementation of this Executive Order. This shall include the development of: (1) the standards for the Governor Reports required pursuant to this Executive Order; (2) the framework to create a Lean culture enterprise wide; and (3) the deployment of the Lean Fellowship and the Lean Expert Partnership Program.

2. Agencies, Boards, and Commissions.

The Director of each state agency, board, commission, and other organization that reports to the Governor shall be responsible for executing the following:

- a. Citizen Engagement. Each Director shall make Washingtonians' priorities the primary focus of operations by increasing continuous engagement, opportunities for involvement, and enhancing the understanding of the people we serve.
- b. Employee Engagement. Each Director shall ensure all state employees have the opportunity for increased engagement and involvement with administration and agency leadership. Washingtonians require a more innovative and responsive government structure to enable all state workers to perform to the highest of their abilities.
- c. Cross-agency Collaboration. Each Director shall be continually active in the exchange of new ideas and insights to achieve the five-priority goal areas of Results Washington, including ongoing reporting to the Governor's Office.
- d. Governor Reports. Each Director shall provide regular reports to the Governor. In advance of the reports to the Governor: (1) organizations shall submit the requested data to Results Washington; and (2) the Director of Results Washington shall produce a report, provided to relevant directors, to track progress against defined measurable goals. Each Director shall be responsible for the data provided to Results Washington by their department.
- e. Alignment. Each organization shall develop, implement, and sustain a responsive, innovative, and data-driven culture and conduct day-to-day operations, legislative efforts, and regulatory or policy reforms and initiatives in alignment with the five goal areas set forth by Results Washington.
- f. Accountability. Each Director shall coordinate with Results Washington staff to allow for more frequent reporting, review of goals, and thorough analysis of organizations' data, measures, and communications as necessary, to facilitate the achievement of specific goals or to address management inefficiencies.

The Director of Results Washington, in collaboration with the Governor's Executive Management Team shall also be responsible for implementing a continued customer oriented approach to state government by increasing public awareness of opportunities for participation in efforts to improve our state. To that end, Results Washington shall utilize technology to promote a system of open data that is regularly updated, transparent, and communicated.

All other elected officials, agencies, boards, and commissions and institutions of higher education are invited to follow the provisions of this Executive Order.

This Executive Order, which supersedes Executive Orders 05-02 and 11-04, shall take effect immediately.

Signed and sealed with the official seal of the state of Washington on this 10th day of September, 2013, at Olympia, Washington.

By:

/s/

Jay Inslee
Governor

BY THE GOVERNOR:

/s/

Secretary of State

[home](#) / [what we do](#) / [measure results](#) / [healthy & safe communities](#) / [goal 4: healthy & safe communities - goal map](#)



Participating agencies/groups

- [Department of Veterans Affairs](#)
- [Department of Corrections](#)
- [Family and Children's Ombudsman](#)
- [Office of Financial Management](#)
- [Department of Health](#)
- [Health Care Authority](#)
- [Hispanic Affairs Commission](#)
- [Department of Licensing](#)
- [Department of Social and Health Services](#)
- [Washington State Patrol](#)
- [Washington Traffic Safety Commission](#)
- [Washington State Department of Agriculture](#)
- [Washington State Department of Labor and Industries](#)
- [Office of Superintendent of Public Instructions](#)
- [Washington State Department of Commerce](#)
- [Liquor and Cannabis Board](#)

Goal 4: Healthy & safe communities - Goal map

Click on any numbered box below for more information.

Healthy People

Safe People

Supported People

HEALTHY PEOPLE

Provide access to good medical care to improve people's lives

HEALTHY BABIES

1.1: Decrease the infant mortality rate for children under 1 year old from 5.1 per 1,000 births in 2012 to 4.4, per 1,000 births by 2016

1.1.a: Increase rate of infants whose mothers receive prenatal care in the

HEALTHY YOUTH * AND ADULTS *

1.2: Decrease percentage of adults reporting fair or poor health from 15% in 2011 to 14% by 2017

1.2.Y.a: Increase the percent of children (19 to 35 months) receiving all recommended vaccinations from 65.2% in 2012 to 72.6% by 2016

1.2.A.a: Increase percentage of mental health consumers receiving a service within 7 days after discharge from 53.3% (January

State Prevention Enhancement (SPE) Policy Consortium

State Strategic Plan Overview

Version 7.27.12

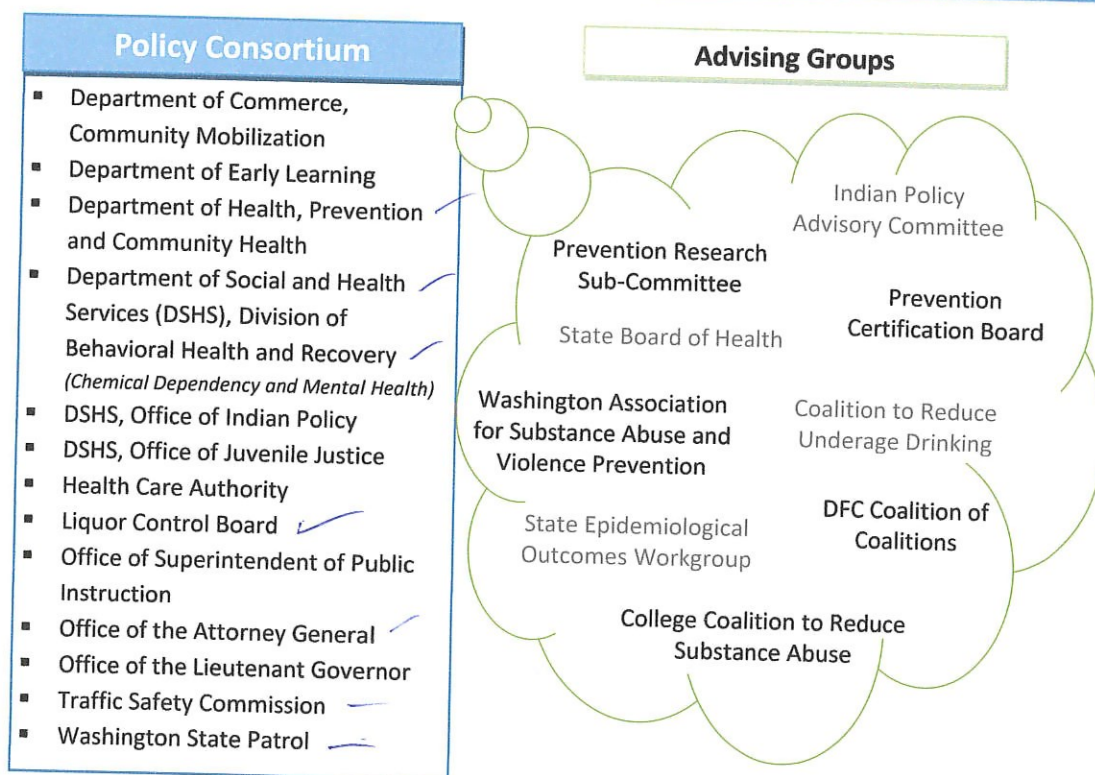
Additional SPE information can be found at www.theAthenaForum.org/SPE



One

Department
Vision
Mission
Core set of Values

SPE Policy Consortium



Department
Vision
Mission
Core set of Values

Strategic Plan Outline

- ✓ Mission and Statement of Purpose
- ✓ Building Capacity
- ✓ Assessment of State
- ✓ Plan for Action (Goals and Objectives)
- ✓ Implementation
- ✓ Evaluation



One

Department
Vision
Mission
Core set of Values

SPE Mission Statement

- **Mission Statement:** Through partnerships, strengthen and support an integrated statewide system of community-driven substance abuse prevention, mental health promotion and related issues.
- **Tag Line:** *Integrating community substance abuse prevention and mental health promotion across WA.*



One

Department
Vision
Mission
Core set of Values

Results of Needs Assessment

Problem areas:

- Substance Use: Overall rankings of based on socioeconomic indicators show:
 - 1st - alcohol
 - 2nd - marijuana
 - 3rd - tobacco
 - 4th - prescription drugs *(note: watch trend related to heroine)*
 - 5th – meth
- Mental Health: key areas based on data available:
 - Depression
 - Serious Psychological Distress
 - Suicide



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Results of Resource Assessment

Conclusions:

- Continue to support what we have in place with state and tribal programs.
- Build on current partnerships.
- Establish new collaborative strategies/activities to work on together as SPE Consortium.



One

Department
Vision
Mission
Core set of Values

SPE Consortium Key Values

(continued from previous slide)

- Address health disparities.
- We will work collaboratively to produce a collective-impact.
- Consider impacts of Health Care Reform and Indian Health Care Improvement Act.
- Honor current state and tribal resources that support substance abuse prevention/mental health promotion.



One

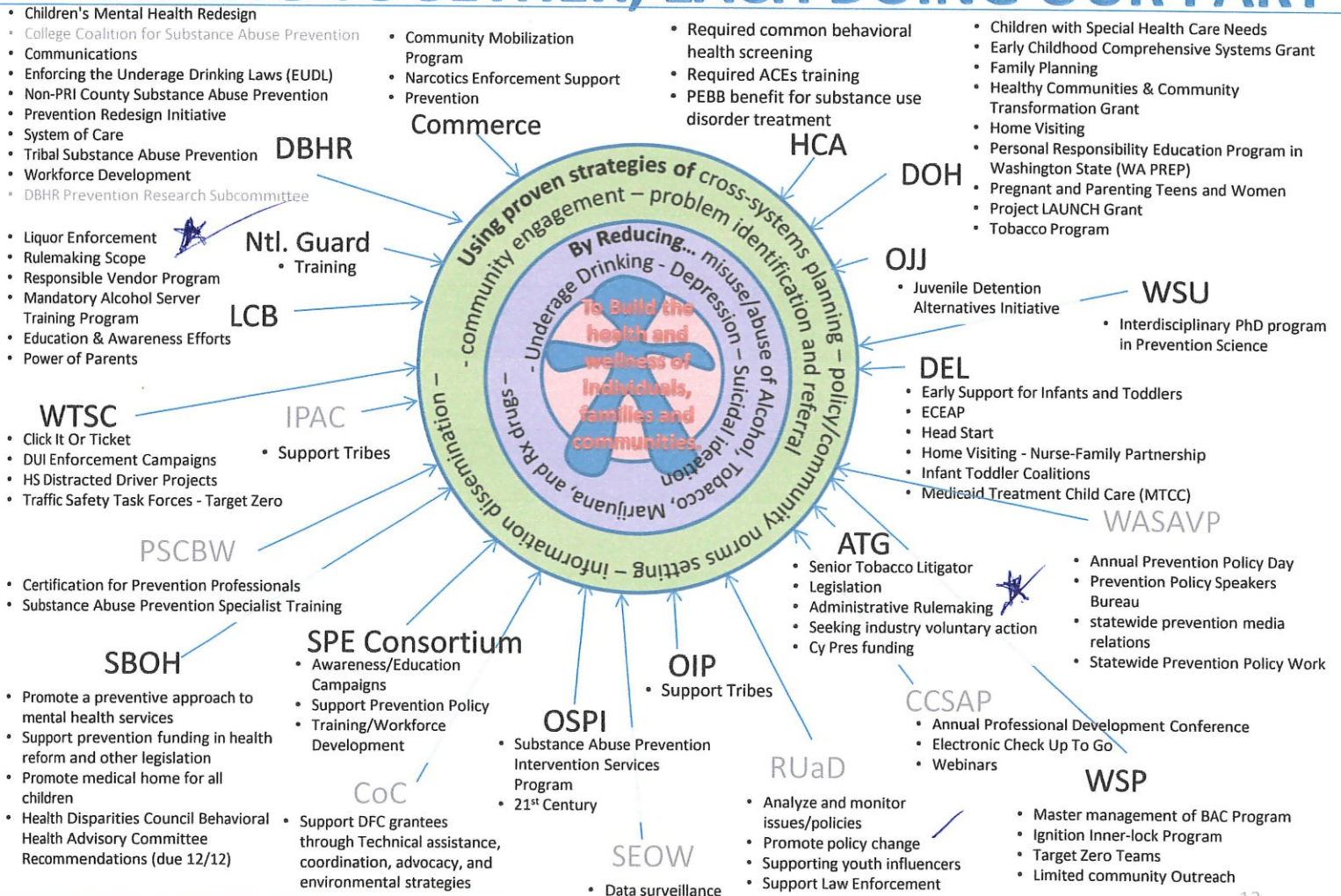
Department

Vision

Mission

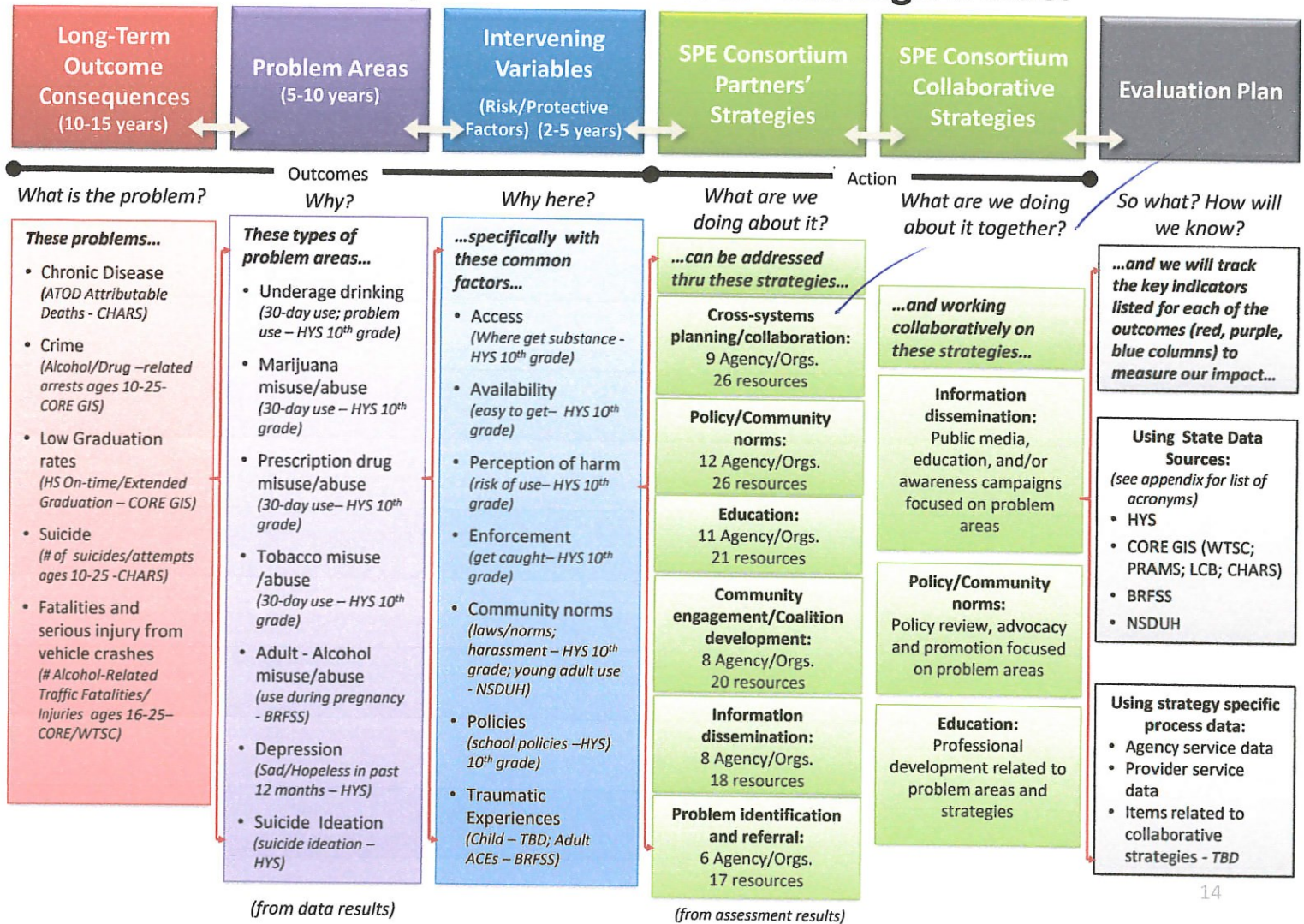
Core set of Values

WORKING TOGETHER; EACH DOING OUR PART

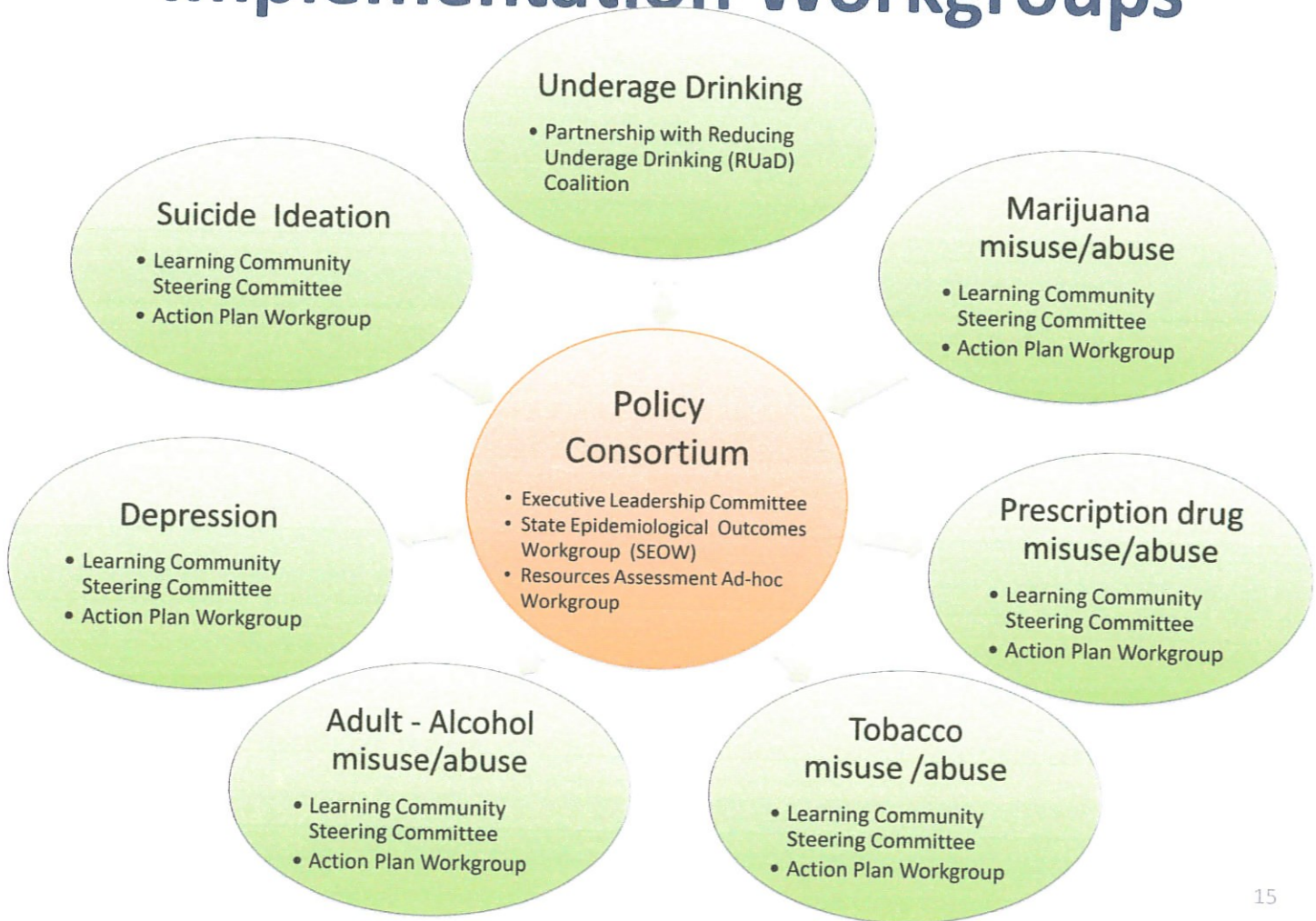


This diagram shows the state-level agencies/organizations and their specific programs that focus on substance abuse prevention and mental health promotion. As of July 2012

SPE Policy Consortium State Plan Logic Model



Implementation Workgroups



Combes, Judy (DSHS/BHSIA/MH)

From: Mariani, Sarah E (DSHS/BHSIA/CD)
Sent: Thursday, July 24, 2014 8:16 PM
To: Fallis, Rusty (ATG); Hood, Toni M (DOL); Holli.spanski@lewiscountywa.gov; Nandi, Paj (DOH); Davis, Paul A (DOH); eriffe@esd113.org; Derek Franklin; Jason R. Kilmer; Havens, Julia (DSHS/DBHR); Mendez, Beatriz (DSHS/BHSIA/CD); Mitch Barker; Woods, Patrick (LCB); Sauer, Kim (LCB); Segawa, Mary B (LCB); McCarty, Scott (DSHS/BHSIA/CD)
Subject: RE: A3 Marijuana Policy Paper

THE PLAN AND THE PARTNERS

Rusty,

Thank you for pulling this together for us and keeping the conversation/work going. This work is so very important and now more than ever with the Results WA and the A3 process is giving us a chance to have an audience with the Governor's office on these issue that matter to us! Gov. Inslee will be reviewing our work in September.

I agree with Rusty that we need to form a paper based on fact and policy that would help us achieve our goal. In the background thinking through how to use it will be a helpful but a separate step. Thanks for getting these both started. I haven't had a chance to review yet but I will.

Thanks again to everyone for your efforts on this.

Sarah

Sarah Mariani, Behavioral Health Administrator
Washington State Department of Social and Health Services
Division of Behavioral Health and Recovery
360.725.3774 (Office)
206.795.6765 (cell phone)

From: Fallis, Rusty (ATG)
Sent: Thursday, July 24, 2014 11:27 AM
To: Hood, Toni M (DOL); Holli.spanski@lewiscountywa.gov; Nandi, Paj (DOH); Davis, Paul A (DOH); eriffe@esd113.org; Derek Franklin; Fallis, Rusty (ATG); Jason R. Kilmer; Havens, Julia (DSHS/DBHR); Mariani, Sarah E (DSHS/BHSIA/CD); Mendez, Beatriz (DSHS/BHSIA/CD); Mitch Barker; Woods, Patrick (LCB); Sauer, Kim (LCB); Segawa, Mary B (LCB)
Subject: A3 Marijuana Policy Paper
Importance: High

Dear A3 MJ Policy Paper Working Group: In connection with our upcoming meeting on August 13, I am attaching an outline that I hope will prompt initial thought and discussion. Our deadline for submitting our paper to the SPE Policy Consortium is **September 1**, so we have no time to lose. The attached outline is not fully developed or complete—it is my "half-baked" effort to generate some discussion and, hopefully, some momentum so that we are not starting from ground zero on the 13th. For your reference, I am also attaching the scientific articles summary that I previously distributed. Please keep those authorities in mind as you consider the "why's" and "what's" of potential policy options.

You will note that the attached outline contains some brief "pros" and "cons." I included these so that we are not thinking about these things in a vacuum. However, I do not believe our policy paper is supposed to address political

safety risks associated with marijuana use, including potential development of dependence.

With these types of restrictions in mind, the Board has a range of options that it can take for the advertising rules. A threshold consideration is the scope of the restrictions on marijuana advertising. This scope could theoretically range from an all-out ban on any type of advertising, or a temporary moratorium, to a tailored approach that specifies what advertising will be allowed, what advertising will be prohibited, or both.

From a public health perspective, the restrictions should be as strict as legally possible.⁶ The Board should also clearly document why the individual restrictions are necessary and provide supporting evidence.

No matter what approach is taken, the Board should keep in mind that minimizing exposure of people under twenty-one years of age to marijuana advertising is an explicit goal of I-502.

General Considerations

As the Liquor Control Board defines the regulatory structure of Washington's new legal marijuana market, it should keep some fundamental prevention and public health principles in mind. There is a solid base of research on what works for preventing problematic substance use in communities and for individuals; and for helping minimize the potential harms of marijuana use, by those who are already using. These lessons should be considered touchstones throughout I-502 rulemaking.

Understand the Basics on Prevention and Public Health. Prevention strategies come in a variety of forms and focus on different types of populations. Some are individual-focused and others are environmental-focused (i.e. community-level). As the Board drafts rules for implementing I-502, it is particularly important that it keep the environmental impacts of the new law in mind and incorporate environmental prevention strategies wherever possible:

Environmental strategies are used to change the context (environment) in which substance use and abuse occur. Environmental strategies

⁶ Some have suggested that since marijuana is still considered an illicit substance under federal law, the Board should consider instituting a moratorium on all marijuana advertising. In a few years, once an analysis of the implementation of I-502 is completed, and the impact on youth use rates *without* exposure to advertising is assessed, the Board could discuss replacing the moratorium with advertising regulations. However, in light of the strong likelihood that an all-out ban would be challenged as a violation of commercial speech rights under the First Amendment to the U.S. Constitution, Article I, section 5 of the Washington State Constitution, or both, the Board should consult with the Washington State Attorney General's Office on the most prudent course of action.

Resources

The following resources describe and assess the effectiveness of various prevention, treatment, and public health strategies utilized in response to marijuana use and in other contexts. These resources specifically relate to issues the Board must address through I-502 rulemaking.

Prevention in General

- University of Washington – Social Development Resource Group - homepage (<http://www.sdr.org/index.asp>) and resource page (<http://www.sdr.org/prevention.asp>).
- Washington State Prevention Enhancement Policy Consortium – *Substance Abuse Prevention and Mental Health Promotion Five-Year Strategic Plan* (<http://www.theathenaforum.org/sites/default/files/SPE%20Strategic%20Plan%20FINAL%20-%20v.%208.10.12.pdf>).
- National Research Council and Institute of Medicine – *Preventing Mental, Emotional, and Behavioral Disorders Among Young People* (http://www.nap.edu/catalog.php?record_id=12480).
- Office of the Surgeon General – *National Prevention Strategy* (<http://www.surgeongeneral.gov/initiatives/prevention/strategy/report.html>).

Marijuana

- RAND – webcast on “Public Health Regulations for Marijuana Legalization” (<http://www.c-span.org/Events/RAND-Corp-Holds-Discussion-on-Public-Health-Effects-of-Marijuana/10737437957-1/>).
- University of Washington - Innovative Programs Research Group (<http://depts.washington.edu/iprg/index.html>).
- SAMHSA – National Registry of Evidence Based Programs and Practices - Marijuana (<http://nrepp.samhsa.gov/SearchResultsNew.aspx?s=b&q=marijuana>).
- Norberg MM, Kezelman S, Lim-Howe N, *Primary Prevention of Cannabis Use: A Systematic Review of Randomized Controlled Trials*. PLoS ONE 8(1): e53187 (<http://dx.plos.org/10.1371/journal.pone.0053187>).
- RAND – Drug Policy Research Center: Marijuana Legalization: (<http://www.rand.org/multi/dprc/marijuana.html>).
- RAND – *Marijuana Legalization: What We Know and What We Don't Know* - Congressional Briefing, November 2012 (<http://www.rand.org/multimedia/video/2012/07/17/marijuana-legalization.html>).

~DRAFT~ SPE Prevention Policy Consortium Team Action Plans

Marijuana Abuse/Misuse Prevention - WHY Policy Impact Team

Goal: Increase state level coordination of prevention services.

Objective: Develop policies related to prohibiting flavored & other products appealing to youth
Strategy: **Policy/Community Norms Strategy**

Activity/Program	When	Who	Lead Organization	Responsible Party (ies)	Status Update
Compile lit review on what already exists for flavored items.	7/1/14	WHY Policy Impact Team and Statewide Partners	WHY Policy Impact Team (PTI)	Rusty	Completed 6/30/14.
Compile research to PIT regarding impact of existing flavored items.					
Create a policy paper – explains why this is a product that shouldn't be sold in the state at this time.	9/1/14	WHY Policy Impact Team and Statewide Partners	Holli S ¹ , Patrick W, Erin R & Mitch B (review)	Rusty (to draft)	Completed 8/29/14.
Identify strategies for creating change [Best to pursue changes via rulemaking (LCB) or lawmaking (legislation)].	10/1/14	WHY Policy Impact Team and Statewide Partners	Cristal C, Holli S ² , Mitch, Erin, Mary, Dixie ³ ?	Derek Franklin & Scott McCarty	
Implement strategies .	5/1/15	WHY Policy Impact Team and Statewide Partners	WHY Policy Impact Team	TBD	
Determine Strategies for Creating polices that will prohibit the sale of marijuana products that appeal to youth.	10/1/2014	State partners/ stakeholders	WHY Policy Impact Team	Mary Segawa-LCB Rusty Fallis-ATG	The Liquor Control Board has put in place emergency rules for edible products that appeal to youth.
Establish method for reporting violations of retail marijuana rules.	10/1/2014	State partners/ stakeholders	WHY Policy Impact Team	Rusty Fallis-ATG	Retail license violations are

² Lobbyist for Associations

³ Really, really need someone from OSPI

Prevention Policy Consortium Meeting

Division of Behavioral Health & Recovery
Blake East Building, Rose Conference Room
4500 10th Ave SE, Lacey WA 98503 (use attached directions)

May 12, 2014 | 1:00 pm – 4:00 pm

GoTo Meeting Connection Available if Needed <https://www2.gotomeeting.com/join/482979450>
Use microphone and speakers (VoIP) Or, call in: Dial +1 (213) 493-0622 | Access Code: 482-979-450 |
Audio PIN: Shown after joining

Meeting called by Sarah Mariani, Behavioral Health Administrator, DBHR

----- Agenda -----

TOPIC	PRESENTER	TIME
Welcome/Introductions	Sarah	10 minutes
Review A3 Action Plans- Marijuana and Alcohol		60 minutes
• RUaD: Communications Impact Team - <i>Deb/ Ray</i>		
• RUaD: Policy Team – <i>Rusty/ Mary</i>		(15 minutes for each team)
• SBIRT - <i>James</i>		
• CPWI- <i>Julia</i>		
Review / Finalize A3 Plans	All	30 minutes
2014 SPE Team Action Plans - next steps	Sarah/All	15 minutes
Break	All	5 minutes
SHCIP Prevention Framework Discussion	Kat Latet, HCA Sue Grinnell, DOH	35 minutes
Partnerships for Success (PFS) Update	Julia	10 minutes
Round-Robin Updates	All	10 minutes
Meeting Wrap-up	Sarah	5 minutes

Next Meeting: Monday, July 14, 2014 1pm-4pm



A3 Problem Solving |

Reducing Youth Use of Marijuana in Last 30 Da

5	Community Laws and Norms; and Favorable Attitudes	Determine strategies for creating policies that will prohibit the sale of marijuana products that appeal to youth.	<ol style="list-style-type: none">1. Compile lit review on what already exists for flavored items.2. Create a policy paper – explains why this is a product that shouldn't be sold in the state at this time.3. Identify strategies for creating change. [Best to pursue changes via rulemaking (LCB) or lawmaking (legislation)].4. Implement Strategies	Rusty Fallis Derek & Scott McCarty TBD: Based on outcome of 2015 leg. session	<ol style="list-style-type: none">1. Completed 7/1/142. Completed 8/29/143. Completed 10/1/144. Ongoing	5/1/15	<p>Lit Review is available for stakeholders to utilize to advocate for the regulation and inherent dangers of certain edibles.</p> <p>Policy paper is available for utilization and provided to LCB for reference.</p> <p>LCB enacted emergency rules to address MJ edibles.</p>
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RUAD Policy Impact Team

ID #	Action Item(s)	Lead	Team	Due Date	Status
Reporting Violations	1. Define/clarify which offices/agencies should be involved. 2. Ensure (future) MJ info prev packets to include violation reporting info.	Janelle Cristal	Patrick W, Mary S, Rusty F	6/1/14	
AG Office – Public Statement	1.1 Discuss at Core Leadership Team Strategic Planning Retreat	Janelle		4/30/14	
	1.2 Talk with Rob Costello & Dave Horn	Janelle		5/9/14	
	1.3 Discuss at Policy Review Meeting	Janelle		5/9/14	
	2 – Is AG's office willing to be a 'receptacle' for collecting complaints? 2 – Does the AG's office have authority to act on these complaints?				
Policies related to prohibiting flavored & other products appealing to youth	1. Compile lit review on what already exists for flavored items.	Rusty	PIT	7/1/14	
	2. Create a policy paper – explains why this is a product that shouldn't be sold in the state at this time.	Rusty (to draft);	Holli S ¹ , Patrick W, Erin R & Mitch B (review),	9/1/14	
	3. Identify strategies for creating change. [Best to pursue changes via rulemaking (LCB) or lawmaking (legislation)].	Derek & Scott McCarty	Cristal C, Holli S ² , Mitch, Erin, Mary, Dixie (3 ²)	10/1/14	
	4. Implement strategies ⁴	TBD	TBD	5/1/15	

¹ To write a paragraph on enforcement² Lobbyist for Associations³ Really, really need someone from OSPI⁴ Consider: impact Med MJ will have on these items.

2. SPE Consortium Partner List

Partner Agency/Organization	Policy Consortium Representative
Attorneys General Office (ATG)	Rusty Fallis, Assistant Attorney General
College Coalition for Substance Abuse Prevention (CCSAP)	Jason Kilmer, Research Assistant Professor and Asst. Director of Health/ Wellness, University of Washington
Department of Commerce (DOC), Community Mobilization (CMOB)	Ramona Leber, Community Mobilization Program Manager
Department of Early Learning (DEL)	Veronica Santangelo, Medicaid Treatment Child Care Administrator
Department of Health (DOH), Division of Prevention and Community Wellness	Consortium Co-chair Sue Grinnell, Director of Division of Prevention and Community Wellness
Department of Social and Health Services (DSHS), Division of Behavioral Health and Recovery (DBHR)	Consortium Co-chair Michael Langer, Behavioral Health Administrator
Department of Social and Health Services (DSHS), Office of Indian Policy (OIP)	Mark Nelson, Children's Long-term Inpatient Program, Program Administrator
Department of Social and Health Services (DSHS), Office of Juvenile Justice (OJJ)	Colleen Cawston, Senior Director
Health Care Authority (HCA)	Ryan Pinto, Director
Indian Policy Advisory Committee (IPAC)	Barbara Lantz, Quality and Care Management Manager
Liquor Control Board (LCB)	Charlene R. Abrahamson, Director of Behavioral Health for Confederated Tribes of the Chehalis Reservation
Office of Superintendent of Public Instruction (OSPI)	Mary Segawa, Alcohol Awareness Program Manager
Prevention Specialist Certification Board of Washington (PSCBW)	Dixie Grunenfelder, Program Supervisor
State Board of Health (SBOH)	Student Assistance / Dropout Prevention
State Epidemiological Outcome Workgroup (SEOW)	Gunthild Sondhi, President
Washington Association for Substance Abuse and Violence Prevention (WASAVP)	Michelle Davis, Executive Director
Washington Coalition to Reduce Underage Drinking (RUaD)	Alice Huber, SEOW Co-chair; Evaluation and Quality Assurance Administrator, DBHR
Washington State Drug Free Communities Coalition of Coalitions (CoC)	Derek Franklin, President
Washington State Patrol (WSP)	Scott Waller, Prevention Systems Integration Lead, DBHR
Washington State Prevention Research Sub-Committee	Bill James, Past Co-Chair
Washington Traffic Safety Commission (WTSC)	Captain Wes Rethwill, Fields Operations Bureau
	Laura Hill, Associate Professor Dept. of Human Development, Washington State University
	Shelly Baldwin, Impaired Driving Program Manager

Marijuana

Workgroup Team: Expand RUaD coalition focus to form one Coalition to address underage drinking and marijuana use.

- **Policy:** Engage state agencies, community partners, and local providers to monitor impacts of I-502 on state and communities and advocate for prevention best practices with Liquor Control Board in rule making for marijuana industry.
- **Education/Professional Development:** Training/conference for state prevention community to focus on implementation, emerging issues, accurate tracking, statewide coordination.
- **Information Dissemination/Public Awareness:** Communications campaign to educate the public regarding marijuana risks, resources, and understanding the new law pursuant to passage of Initiative 502 and disseminate via schools, community coalitions and networks, public health, and law enforcement.
- **Information Dissemination/Public Awareness:** Website - Resources and FAQs

Tobacco

Workgroup Team: Establish State Inter-agency workgroup to focus on SPE strategies.

- **Policy:** Provide education and information on the creation of no-smoking policies to create smoke-free workplaces specifically targeting college and state agencies.
- **Policy:** Convince motion picture industry to change industry policy to eliminate depictions of tobacco use in youth-rated movies.
- **Policy:** Increase tobacco prevention funding by providing information to policy makers on the impacts of prevention.
- **Education/Workforce development:** Provide training and technical assistance to healthcare clinics to screen for tobacco use and refer to cessation resources in order to increase number of patients screened.
- **Information Dissemination/Public Awareness:** Provide Point of Sale retailer education and conduct the Community Assessment Neighborhood Stores (CANS) Surveys; and share the results and other impact information with policy makers.
- **Information Dissemination/Public Awareness:** Establish and maintain public awareness of the causal link between smoking in movies and youth smoking.

Prescription Drugs

Workgroup Team: Establish statewide workgroup to implement SPE strategies. Work collaboratively with existing statewide Take Back Your Meds Coalition and Unintentional Poisoning Workgroup.

- **Policy:** Promote value of Prescription Monitoring Program and seek opportunities to ensure funding for program to continue.
- **Policy:** Promote the use of the Emergency Department best practices model for prescribing medications among hospitals.
- **Education/Workforce Development:** Provide presentation and online information to local communities regarding prescription drug abuse statistics and strategies for prevention.

APPENDIX H

Title

Initiative 502

Sponsor

Chris Imhoff, Director

Objective(s)

- Develop rules and identify activities deemed necessary and advisable to implement the provisions of section 28 of Initiative 502 by December 1, 2013;
 - Implement enhancements of the Washington State Health Youth Survey (funds may also be used to expand survey administration to higher education)
 - Contract with Washington State Institute for Public Policy to conduct cost-benefit evaluation and produce reports required in section 30 of I-502.
 - Contract for additional provision of Prevention and Adolescent Treatment (min. of 85% EBP, 15% may be used for emerging best practice or promising practices)
- Coordinate provisions of I-502 with Governor's Office and State Agencies named in the Initiative.
- Determine when funds can and should be spent by (i.e., if funds are deposited in April, 2014 what is the timeframe for allocating and spending the funds?).
- Evaluation of DBHR workgroup. (*Determine what we would like to evaluate.*)

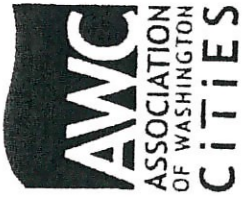
Constraints

- Federal Government may not allow the law to be implemented as written.
- Funding levels remain an "educated guess" at this time, as the system design is unprecedented
- Governor's Office has asked for internal discussions only at this time, as the transition team and Governor Elect Inslee make decisions relating to implementation.

Agency Goals Supported

- Prevention- Julia Greeson
- Treatment- Amy Martin
- Research- Linda Becker
- Evaluation- Alice Huber

Appendix I



Overview

House keeping -
- don't need phone
- muted - type in 2's

Thank you to our partners: 

• WSAC • MRSC • WATO • PARTNERS
• WAPA • LCB
• WASPC • CJTC

Candice Bock, AWC Thank our speakers. Bios

Ian Goodhew, Deputy Chief of Staff for King Co.
Prosecuting Attorney's Office

Jennifer Parda, senior associate, Sebris Busto James

Rick Garza, Liquor Control Board Deputy Director

October 4, 2013

Board of Directors
Liquor Control Board
PO Box 43080
Olympia, WA 98504

RE: Proposed WAC 314-55 Marijuana Licenses, Application Process, Requirements and Reporting

Dear Liquor Control Board Members:

I am writing again on behalf of our 281 member cities with comments on the proposed rules regarding implementation of legalization of marijuana under Initiative 502. I want to reiterate how appreciative we are for Board's willingness to reach out to cities and partner with AWC on training opportunities.

As the Board prepares to adopt the final rules for implementing the recreational marijuana market, we believe it is appropriate to focus on the need to address public safety and enforcement. As everyone has acknowledged, enforcement of the illicit market and reconciling the recreation and medical markets will be key to the successful implementation the recreational market. The state needs to develop a comprehensive enforcement strategy in cooperation with local law enforcement. We must work together if this is going to be effective. The State cannot expect local law enforcement to be the leaders on enforcement without providing sufficient funding and without adequately reconciling the un-regulated medical and highly-regulated recreational markets. We need the state to provide local government with adequate financial resources by sharing the revenue generated from marijuana sales so we have the ability to fund the appropriate public safety response. We also need the State to take the necessary steps to reconcile the two markets during the next legislative session. Without certainty and clarity between these two markets, it will be next to impossible for our police and prosecutors to take enforcement action.

In addition to these larger public safety and enforcement issues, we continue to hear from cities with concerns about the following aspects of the rules:

- The definition of parks: The Board included Metropolitan Parks Districts, but under state law there are additional types of parks districts. The definition must be expanded to include Parks and Recreation Districts and Joint Park and Recreation Districts. We are also concerned about the complete exclusion of trails from the definition of parks. There needs to be consideration for trail facilities in considering the 1,000 buffer.
- The definition of playground: Similar to the previous comment, this definition should be updated to include facilities owned and operated by Metropolitan Parks Districts, Parks and Recreation Districts and Joint Park and Recreations Districts.

- The definition of recreation center: Many recreation centers are owned and operated by parks districts. The Board should include those owned by Metropolitan Parks Districts, Recreation Districts and Joint Park and Recreation Districts in the definition.
- Renewal notices: WAC 314-55-165 says that the board will give governmental jurisdictions "approximately ninety days written notice of premises that hold annual marijuana licenses in that jurisdiction that are up for renewal". Cities would prefer that it say "a minimum of" ninety days written notice rather than say "approximately". "Approximately" is too ambiguous.
- Locating any marijuana base business in residential areas: We understand that it is the intent of the LCB to preclude the siting of any licensee in a residential area, but there is still some confusion from cities based on the wording of the rule. We would recommend a very clear statement addressing the prohibition of locating in any residential area.

We look forward to continuing our partnership to see this effort through successfully. If you have any questions about these comments, please feel free to contact Candice Bock (candiceb@awcnet.org) in our office. Thank you for the opportunity to share our comments.

Sincerely,



Mike McCarty
Chief Executive Officer

PARTNERS

June 4, 2013

Board of Directors
Liquor Control Board
PO Box 43080
Olympia, WA 98504

RE: DRAFT WAC 314-55 Marijuana Licenses, Application Process, Requirements and Reporting

Dear Liquor Control Board Members;

I am writing on behalf of our 281 member cities with comments on the proposed draft rules regarding implementation of legalization of marijuana under Initiative 502. As you are aware, the conflict between state law and federal law in this area causes a great deal of concern for cities in how best to address the implementation of I-502. Cities, like many others, anxiously await further guidance from the federal government. We appreciate the LCB's willingness to reach out to cities and to work with AWC to educate our members about this process and the potential implications of legalization.

To gain a better understanding of the issues that cities are facing and what types of questions they have about marijuana legalization, AWC conducted a survey of our members. The results are attached and I encourage you to review them as they provide valuable insights and draw attention to those areas that cities struggle with in addressing marijuana regulations.

AWC has heard a variety of specific comments from cities on the proposed rules that we want to share with the Board and ask that you address in subsequent versions of the rules. The most important issue that must be addressed in the new rules is adding a clear requirement that all applicants and licensee must comply with all applicable local laws and regulations including but not limited to those related to licensing, taxation, health and safety, zoning and land use, environmental regulations, and permitting. Failure to comply with local laws and regulations should clearly disqualify anyone from receiving a state license or be grounds from revocation or denial of license renewal. This clarification is absolutely necessary to insure that licensee are accountable not just to the state, but to the local jurisdiction and there is no excuse for flouting local laws and regulations.

In addition, we have the following recommendations:

- WAC 314-55-010 Definitions: The definitions of "playground" and "public park" are not sufficient to address the myriad of typical public facilities. The definitions do not currently include other public owners such as parks districts or non-profit organizations that may own parks/play grounds open to the public like Rotary and Kiwanis Clubs. They also do not include privately owned parks that maybe owned by a Homeowners Association and be available to the public. Additionally, the child care center definition should be more specific and tied to an existing definition like that in RCW 43.215 for consistency and clarity. The same is true for the definition of secondary school where there are a number of different options it may provide greater clarity to reference an existing definition.
- WAC 314-55-020 (1): As cities have no authority to approve a license, we would recommend clarifying that the local authority may respond with any objections to the application. WAC 314-55-020 (11): This section should also include the requirement to be current on any local tax obligations.

- WAC 314-55-040: The rules should be clear that criminal history includes both in-state as well as out-of state convictions.
- WAC 314-55-045 (11): To insure compliance with the 1,000 feet restriction, the applicant should be required to provide a map stamped by a licensed surveyor identifying any restricted facilities and certifying compliance with the rule. Additionally, the LCB should develop a procedure for addressing the circumstances when a restricted use like a child care center locates within the 1,000 feet radius after the license has been issued.
- WAC 314-55-050: The local jurisdiction should be notified any time a license is denied, suspended or revoked.
- WAC 314-55-081 Number of retail licenses: The rule references the number of licenses permitted, but has not yet identified how that number will be determined. Cities would like to better understand how that number will be developed and how the distribution will be implemented.
- 314-55-147 – The hours of operation from 6am to 2am seem to be model after liquor retailers, but since these will be stand-alone stores with no onsite consumption it seems unnecessary to have lengthy hours. We would encourage consideration of local input into hours of operation.
- WAC 314-55-155 Advertising: In addition to the proposed restrictions, any advertising must also be subject to the applicable local signage ordinances.
- WAC 314-55-165 (1)(f): This sections says that objections by the public to a license renewal will be referred to the local jurisdiction for consideration. However, we strongly believe that as the licensing authority it is the LCB's responsibility to investigate and respond to objections raised by the public about any licensee. Any other approach would be an attempt to transfer this responsibility to the local jurisdiction which lacks any direct authority over the licensee.
- WAC 314-55-520 – 535 violations and penalties: Given the sensitivity of the marijuana market, we are concerned that there are number of violations for which the penalty does not accrue to the point of license revocation. Of particular concern are those violations having to do with minors on the premises or employed at the business. Given the strong desire to keep this drug away from minors, it would seem appropriate to have an escalating penalty resulting in revocation for those violations. Additionally, the penalty for a licensee or employee consuming on the premises should also result in license revocation after repeated violations similar to liquor license requirements.

We continue to be concerned about the local impacts implementation of legalized marijuana will have on cities particularly in the area of law enforcement. Cities agree with the assessment that the legal market will only work if there are adequate controls in place and effective enforcement against the black market. To that end, we believe that there will be a need for resources provided to the local jurisdictions to help with that enforcement. We hope to work with the Board and the Legislature to secure that support.

AWC values the opportunity to provide comments on the proposed rules. If you have any questions about these comments, please feel free to contact Candice Bock (candiceb@awcnet.org) in our office. We look forward to continuing to work together on this issue. Again, we appreciate the Board's willingness to engage cities in the discussion and implementation of these rules. An issue this complex requires strong partnerships and we are committed to partnering with the Board moving forward.

Sincerely,

Mike McCarty
CEO

Attachment: Cities' survey responses



February 24, 2014

The Honorable Jay Inslee
Governor

The Honorable Rodney Tom
Senate Majority Leader

The Honorable Mark Schoesler
Senate Republican Leader

The Honorable Sharon Nelson
Senate Democratic Leader

The Honorable Andy Hill
Ways & Means Chair

The Honorable Frank Chopp
Speaker of the House of Representatives

The Honorable Pat Sullivan
House Majority Leader

The Honorable Dan Kristiansen
House Minority Leader

The Honorable Ross Hunter
Appropriations Chair

Subject: Mayors call on state to provide marijuana legalization enforcement and public safety protections

Dear Governor and Legislative Leaders:

As mayors from across Washington State, we are asking that the state partner with cities and towns to meet the commitment to provide local communities with strong regulation, law enforcement and public safety protections expected by citizens when voters legalized marijuana. Of the eight mandates for legalized marijuana from the federal government, five fall to local jurisdictions and local law enforcement.

Washington voters supported marijuana legalization with the assurance that government would implement robust oversight and enforcement. The state needs to meet these commitments to make the new marijuana laws work. To do so the state and cities must work in cooperation.

The majority of marijuana sales and use will occur in our jurisdictions. This makes us responsible for overseeing permitting, code enforcement, ensuring money and drugs stay out of criminal hands, preventing distribution to minors, and addressing drugged driving and other adverse public health consequences.

If the state is relying on local cities to enforce new marijuana laws, it needs to provide some of the new marijuana tax revenues to pay for it – this is a matter of common sense and fairness. It is estimated legalizing marijuana will give the state significant new annual tax revenue. We're asking for a portion of those revenues.

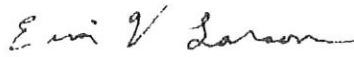
Communities are already feeling the impacts of legalized marijuana, even before retail operations open this summer which will dramatically expand access. The state has only 69 liquor enforcement officers and they will only focus on licensing. All other oversight and enforcement falls to local governments.

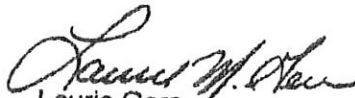
Cities can't accommodate the increased needs created by legalization of marijuana without funding. We can't wait, this is already having an impact and will only increase in the next few months as businesses start-up operations.

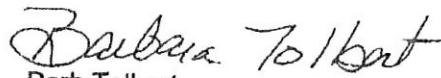
Washington voters took a leap of faith and approved marijuana legalization. We have to work together if this initiative is to be implemented successfully. We have a history of partnership working together to meet the needs of our communities and state. Let's build on this track record of success going forward. We ask that the legislature take action now, before the 2014 session ends, to share marijuana revenue with cities.

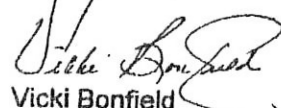
Sincerely,

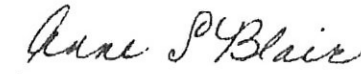

Patrick Rushing
Mayor, Airway Heights

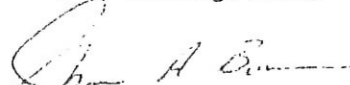

Einar Larson
Mayor, Almira


Laurie Gere
Mayor, Anacortes

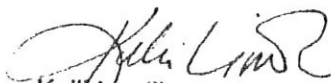

Barb Tolbert
Mayor, Arlington



Vicki Bonfield
Mayor, Asotin


Anne Blair
Mayor, Bainbridge Island


Shane Bowman
Mayor, Battle Ground

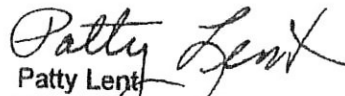

Claudia Balducci
Mayor, Bellevue

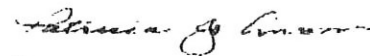

Kelli Lanville
Mayor, Bellingham

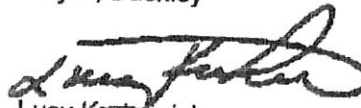

Betty Barnes
Mayor, Bingen

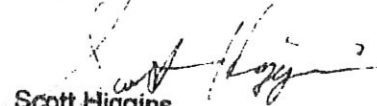
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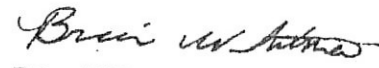
Dave Gordon
Mayor, Black Diamond


Patty Lent
Mayor, Bremerton


Pat Johnson
Mayor, Buckley


Lucy Kraljick
Mayor, Burien


Scott Higgins
Mayor, Camas

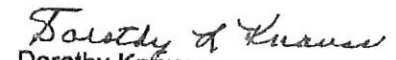

Brian Whitmore
Mayor, Carbonado

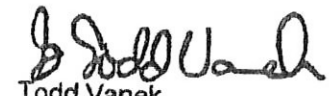
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Bonnie Canaday
Mayor, Centralia

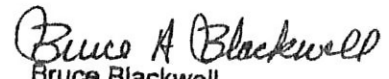

Dennis Dawes
Mayor, Chehalis


Tom Trulove
Mayor, Cheney



Dorothy Knauss
Mayor, Chewelah


Todd Vanek
Mayor, Colfax

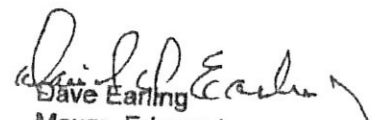

Jason Miller
Mayor, Concrete



Bruce Blackwell
Mayor, Connell


Margaret Harto
Mayor, Covington


Craig George
Mayor, Dayton

Dave Kaplan
Mayor, Des Moines


Dave Earling
Mayor, Edmonds



Liz Reynolds
Mayor, Enumclaw

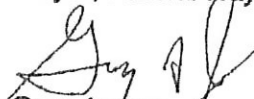

Keith Vradenburg
Mayor, Entiat

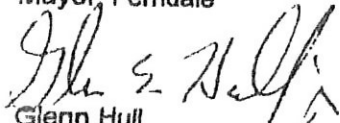

Ray Stephanson
Mayor, Everett

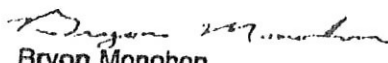
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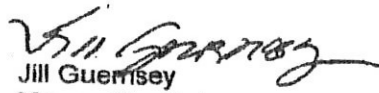
James Woomack
Mayor, Farmington

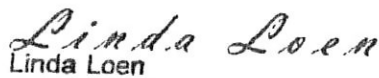

Jim Ferrell
Mayor, Federal Way



Gary Jensen
Mayor, Ferndale



Glenn Hull
Mayor, Fife


Bryon Monohon
Mayor, Forks



Jill Guernsey
Mayor, Gig Harbor


Linda Loen
Mayor, Gold Bar


Mike Cassinelli
Mayor, Ilwaco

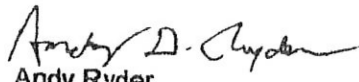

Fred Butler
Mayor, Issaquah


David Futcher
Mayor, Kelso



David Baker
Mayor, Kenmore

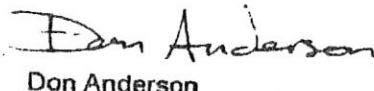

Suzette Cooke
Mayor, Kent

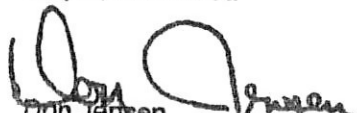

Amy Walen
Mayor, Kirkland



Andy Ryder
Mayor, Lacey

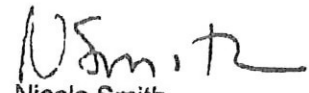

Mary Jane Goss
Mayor, Lake Forest Park


Vern Little
Mayor, Lake Stevens

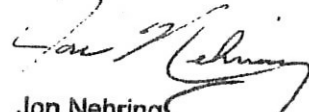

Don Anderson
Mayor, Lakewood

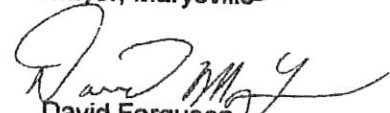

Don Jensen
Mayor, Longview



Debra Heinzman
Mayor, Lyman



Nicola Smith
Mayor, Lynnwood


Mario Martinez
Mayor, Mabton

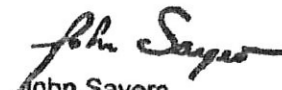

Jon Nehring
Mayor, Marysville

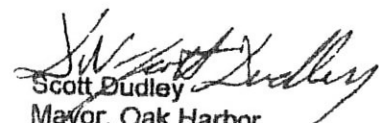

David Ferguson
Mayor, Mesa

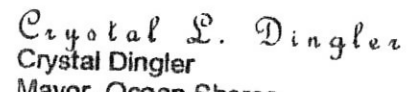

Ken Estes
Mayor, Montesano


Jerry Smith
Mayor, Mountlake Terrace


Jennifer Gregerson
Mayor, Mukilteo


John Sayers
Mayor, Napavine


Scott Dudley
Mayor, Oak Harbor


Crystal L. Dingler
Mayor, Ocean Shores


Doug Pilinski
Mayor, Odessa

-----Original Message-----

From: Gundermann, Chris (WSP)
Sent: Monday, March 04, 2013 1:34 PM
To: Sutton, Steve (WSP)
Subject: FW: I-502

What are the ramifications if we say - no?

Assistant Chief Christopher T. Gundermann Washington State Patrol Investigative Services Bureau
(360) 704-2978

"Service with Humility"

-----Original Message-----

From: Sutton, Steve (WSP)
Sent: Monday, March 04, 2013 1:08 PM
To: Gundermann, Chris (WSP)
Subject: FW: I-502

Active
Partner

A/C Gundermann,

The Agency, through FOB, was asked by the Liquor Control Board (LCB) to participate in the RFP process for Marijuana Cultivation and Processing Contracts. FOB sent the request to us, as we have been a active partner with LCB in their rule making. Initially, we did have some reservation regarding this request, however after learning more about it - we believe it is appropriate. Please see Lt. Brogan's email below. Let me know if you have any concerns. Thanks.

Steve

-----Original Message-----

From: Brogan, Mark (WSP)
Sent: Friday, March 01, 2013 4:37 PM
To: Sutton, Steve (WSP)
Subject: I-502

Captain,

I have been asked by the Liquor Control Board (LCB) to participate in the review of Request For Proposals (RFP) for marijuana cultivation and processing contracts.

The initial reservations I had of whether or not a conflict of interest existed were alleviated when I was advised by LCB that the WSP would be one of several state agencies represented on the review team which includes Department of Enterprise Services (DES), Department of Agriculture, Department of Licensing, and LCB. Also the process is being done with standard contract RFP scoring.

The entire review process of the 52 RFP's is being done electronically and confidentially. I will be assigned a rater ID number so my scoring will be included in the total only, no narratives. All public disclosure will be done through LCB and due to the confidentiality of scorers, will not impact participating agencies.

I believe this is a great opportunity for the WSP to have a voice in this process and believe based on my position, I am the best representative for the agency.

A good analogy of this process would be one of our Captains or Lieutenants sitting on another agencies promotional assessment center.



The Agency, through FOB, was asked by the Liquor Control Board (LCB) to participate in the RFP process for Marijuana Cultivation and Processing Contracts. FOB sent the request to us, as we have been a active partner with LCB in their rule making. Initially, we did have some reservation regarding this request, however after learning more about it - we believe it is appropriate. Please see Lt. Brogan's email below. Let me know if you have any concerns. Thanks.

Steve

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Sent: Friday, March 01, 2013 4:37 PM

To: Sutton, Steve (WSP)

Subject: I-502

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The initial reservations I had of whether or not a conflict of interest existed were alleviated when I was advised by LCB that the WSP would be one of several state agencies represented on the review team which includes Department of Enterprise Services (DES), Department of Agriculture, Department of Licensing, and LCB. Also the process is being done with standard contract RFP scoring.

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I believe this is a great opportunity for the WSP to have a voice in this process and believe based on my position, I am the best representative for the agency.

A good analogy of this process would be one of our Captains or Lieutenants sitting on another agencies promotional assessment center.

With your approval, I will begin this on March 4th and be completed by March 11.

Please let me know if you have any follow up questions.

Lieutenant Mark Brogan
Washington State Patrol
Investigative Assistance Division
(360)239-1987

Association of Washington Cities

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

From: Candice Bock
Sent: Wednesday, November 07, 2012 10:28 AM
To: 'rjg@liq.wa.gov'
Subject: 502 session for local government

PARTNERING

Rick,

I left you a voice mail, but wanted to follow up with an email too. We are putting together a webinar on 502 for local government. We are going to be partnering with the Counties, Prosecutors, Law Enforcement and MRSC. We would love to have LCB participate. We are looking at the afternoon of November 27 or the morning of November 28. Please let me know if LCB would be willing and available to participate. Thanks.

Candice Bock

Legislative & Policy Advocate

State & Federal Relations
Association of Washington Cities

1076 Franklin Street S.E. Olympia, WA 98501-1346

(360) 753-4137 (office)

(800) 562-8981 (toll free)

{HYPERLINK "mailto:candiceb@awcnet.org"}

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

JOHN WORTHINGTON

From: Dawn Larsen <Dlarsen@waspc.org>
Sent: Wednesday, February 13, 2013 7:14 AM
Subject: FW: [WASPC MEDIUM PRIORITY] Implementation of I-502

Tis good.

Dawn Larsen, Director of Projects
WA Assoc of Sheriffs and Police Chiefs
3060 Willamette Dr. NE, Lacey, WA 98516
360-486-2419

From: gtwo-bounce
Sent: Tuesday, February 12, 2013 4:56 PM
To: Dawn Larsen
Subject: [WASPC MEDIUM PRIORITY] Implementation of I-502



Get The Word Out

Please don't reply to this message! This mailbox is not monitored.

WASPC Members:

As you know, the Washington State Liquor Control Board (LCB) is currently establishing rules to implement recreational marijuana and directed the state to establish the means to grow, process, and sell marijuana.

★ WASPC will be working with the LCB during this process; we will be collating general issues you, our members, specific areas of concern and suggestions for rules to be implemented. Once we have gathered and collated the regular partners including AWC and WACO to reduce duplication and be as inclusive as possible of all issues.

Thank you for your assistance in moving forward with this somewhat difficult initiative. Your prompt response is not constraints.

As always, if you have any questions, please let me know.

Sincerely,
Mitch

Mitch Barker, Executive Director
WA Association of Sheriffs and Police Chiefs
Main: 360.486.2380 Direct: 360.486.2383
Email: mbarker@waspc.org Web: www.waspc.org

WASPC Members:

As you know, the Washington State Liquor Control Board (LCB) is currently establishing rules to implement I-502. This initiative legalized recreational marihuana and directed the state to establish the means to grow, process, and sell marihuana.

I have spoken to some of you, as well as other stakeholders, that have concerns and suggestions. Since we will be meeting with the LCB in this process, I wanted to try to collate the issues you want addressed in general, and hear any specific areas you wish to have rules implemented, and what suggestions you have for the rules. Once we hear back from our membership, we will collate the information and do our best to bring the unified concerns forward in an integrated manner. We will also be working with our regular partners such as AWC and WACO, to reduce duplication and make sure we cover as many relevant issues as we can.

A word on going forward – whether you were for or against this change in the law, it is in fact now the law. Suggesting changes or rules aimed at stopping the will of the voters or attempting to stymie the forward movement of this initiative will not be helpful and will, likely, be counterproductive.

Please forward your thoughts on this issue as soon as possible. The LCB is under tight time constraints and we need to get our thoughts to them as soon as we can. As always, if you have any questions, give me a call.

Mitch

Date: Tue, 12 Feb 2013 15:36:04 +0000

From: Candice Bock

To: James McMahan

Subject: RE: 502

We are interested. Candice Bock Government Relations Advocate Association of Washington Cities Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor. -----Original Message----- From: James McMahan [mailto:JMcMahan@wacounties.org] Sent: Tuesday, February 12, 2013 6:29 AM To: Mitch Barker Cc: Candice Bock Subject: Re: 502 I'm in. Please excuse my brevity- sent from my wireless. -James On Feb 12, 2013, at 6:28 AM, "Mitch Barker" wrote: Good morning. I have been asked by my bosses to seek input from all of our members for concerns to relate to the LCB as they make rules for 502. The plan is to get the top issues collated and then submit them to the LCB. I thought all of our groups might want to do this together and submit one set of concerns. Let me know if you have any interest in this. Mitch Sent from my iPad